INSTITVTIONS,

OR

Principall grounds of the Lawes and Statutes of *England.*

Newly and verie truly corrected and *amended, with many new and good additions:* very profitable for all *sorts of people to know,* lately augmented and *Imprinted.*

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The Prologue of the Author, to the *Reader*.

DEmosthenes the renowned Orator, defineth Law in this wise. The Law (saith he) is the thing that all men ought to obey for many causes, but especially because law is the inuention, and also the gift of God, the decrees of prudent men, the chastisement of offences, and finally the common suerty of a realme, whereby it becommeth all men to liue, which be conuersant in the same. Chrisippus also, an excellent Philosopher, thus beginneth his booke of Laws. The Law is king of all, as well diuine as humaine affaires, the president and controuler of things honest and dishonest, the Prince, the Captaine, and the Ruler of the iust and vniust, and it is of ciuill creatures, aswell the commaunder what they ought to doe, as the forbidder of what they ought not to doe. These authentike sayings of wise men, assuredly ought much to inflame vs to the knowledge of these things without which we shall be esteemed as no men, but as brute and sauage beasts. Let vs not commit that, that it bee said of Englishmen, as it was once said of the men of Athens, that is, that we make very good and profitable Lawes, but we vse them not. Certainly there can be no greater reproch to a Common wealth, then this. One Lesson I would we learned of the ancient Roman Lawyer named Cellsus, and that

is this: The knowledge of Law is not to beare away the words, but the pith and power of them. This is written, becauſe ther be many which when good and wholeſome Lawes be made, ſeeke not to ſee them executed, and obſerued, but rather how to defraud them and to haue them vnexecuted: which kind of people after the ſentence of moſt ancient Lawmakers, be no leſſe worthie of reprehenſion then they which doe expreſly againſt the Law. Now they doe (ſay they) againſt the Law, which doe the thing which the Law forbiddeth. And they defraud a law or ſtatute, which the words of the Law ſaued, doe peruert the meaning and ſence of it.

Let vs then ſo reade the Law, that we may beare away the ſence and meaning of them, and ſo fulfill and obſerue the Lawes, that it may appeare, that they were not made in vaine. Thus doing we ſhall pleaſe God, we ſhall be obedient ſubiects to our Prince. And finally, we ſhal ſeke our owne weale and ſafetie.

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What

What is Law. Chap. 1.

THe Law is the direction and miniſtration of Juſtice. And Juſtice is (as the Emperour Iuſtinian ſaith in his Inſtitutions) a conſtant and permanent will, to render vnto euerie perſon his right and dutie. The learning or prudence of the law, is a knowledge of diuine and humaine things, a ſcience and perfect notice of equitie, and iniquitie, of right or wrong.

Now forasmuch as a great portion of the prudence, or ſcience of the Lawes of this Realme of England, conſiſteth in the perfect knowledge of Eſtates, which men haue in lands & tenements, we ſhal firſt as compendiouſly, and as ſimply and plainly as we can, treate ſomewhat of eſtates.

A diuiſion of Eſtates. Chap. 2.

WE ſhal therefore vnderſtand, that whoſoeuer hath any eſtate in lands or tenements, either he hath in the ſame onely a chattell, or free-hold, or an inheritance. If he hath an eſtate but for terme of certaine yeares, or at his landlords will, then it is called a chattell, if for terme of his life, or for another mans life, it is called a free-hold. And if he hath to him and to his heires in fee ſimple, or in taile, then he hath an eſtate of inheritance.

Chattell.

Free-hold.

Inheritance.

Tenant for terme of yeares. Chap. 3.

TEnant for terme of yeares, is he to whome landes or tenements be let for terme of cer-

taine yeares as is agréd betweene the landlord and the tenant. And when the person to whome such lease is made, doth enter by force of the said lease, and is in possession of the same, then he is called a tenant for terme of yeares.

Rent reserued.

And here ye shall note, that if the lessor that made the lease, hath reserued vnto him a yearely rent vpon the said lease, as is accustomably vsed to be done, if the rent be behind and vnpayed, it shall be in his election, either to enter and distrain for the rent, or to bring an action of debt against the tenant for the arrerages of the same. But in this case it is requisit, that the lessor were seised of the lands or tenements at the time of the making of the lease, for otherwise it shall be a good plee in the action of debt, for the tenant, to say the lessor had nothing in the lands and tenements at the time of the lease made, except the lease were made by deede indented, for then this plee shall not be in the tenants mouth to plead.

Action of Debt.

A good plee.

Liuerie of seison needeth not in a lease for terme of yeares.

And it is to be knowne, that in a Lease for terme of yeres, whether it be by deede, or without deede, there néede no liuery of seison to be made to the lessée, but he may enter when he will by vertue of his lease, without any further ceremonie of the law.

And if a man leaseth lands for terme of yeares, though the lessor chanceth to die before the lessée doth enter, yet he may enter well enough: Otherwise it is where liuerie of seison is to be made, as in freeholds and inheritances.

Wast.

And if ỹ tenant for yeres doth wast, ỹ landlord may bring an action of wast against him and shall recouer the place wasted, & his treble damages.

The

Also if a lease for yeares be made of two seuerall things, and after the one is recouered, the lesse shall hold the other, and the rent or farme shall be apportioned, M. 12. H. 8.

Also if the the Tenant for yeares graunteth a greater estate in the land, then he hath himselfe, whereby he conueyeth the fee simple to himselfe, he shall forfeit his lease or terme. Forfaiture.

Tenant at will. Chap. 4.

TEnant at will, is he, to whom lands or tenements be leased to haue and to hold the same at the will of the lessor. And in this case the lessour may put out his tenant at what time him listeth. But yet neuertheleese, if the tenant haue sowed the grounds with Corne, in this case if the lessor will enter and put out his tenant before haruest, the law will giue him free comming and going to reape and carry his Corne away, without any punishment or damages to be sustained for his so doing, because he knew not at what time the lessor would enter. But otherwise it is of tenant for terme of certaine yeares, for if he soweth the ground, and his terme of his lease bee come out and expired before the Corne be ripe, in this case the lessor or he in the reuersion may enter and take the Corne, because it was the fault of the tenant to sow the ground, knowing the end of his terme.

In like wise, tenant at will shal haue free comming and going after the time of the lessours entrie, to carrie away his houshold stuffe and goods for a reasonable space.

Ye shall also vnderstand, that he that maketh a

Distres, or action of debt.

lease at will, may reserue an annuall or yearely rent, in which case if the rent be behind, he may enter be y will, and distraine the goods and chatels of the tenant, or at his election he may bring an action of debt against him.

Also it is to be knowne, that tenant at will of a house or tenement, is not bound by the order of the law to sustaine, and repaire the houses that be decayed and ruinous, as is the tenant for yeres

Wast.

and therefore no action of wast lieth against him: yet if he will doe wilfull wast, as if he plucketh downe the houses, or cutteth downe the trees: it hath bene thought by the Sages of the law, that the lessour may bring an action of Trespasse a-

Trespasse.

gainst him, and shall recouer his losses thereby sustained.

And if such a tenant die, and his heire enter, in that case the lessour may haue an action of Trespasse against the heire for his entrie.

Tenant by Copy of Court roll. Chap. 5.

THere is an other kind of tenant at will, which is called tenant by Copy of the court Rolles.

And this is, when a man is seised of a manour, within which it hath bene vsed time out of minde, that the tenants within the bounds and precinct and of the said Manour, haue holden lands and tenements to them, and to their heirs in fee simple, fee taile, or for terme of life, at the will of the Lord, according to the custome of the manour. And such a tenant cannot alien or sell his land by his deede, for if he doe, the land or tenement that is so alienated and sold, is forfait into the Lords hands, but if he will alien his copyhold land

land to an other, he muſt accoꝛding to the cuſtom, come into the Loꝛds court, and there ſurrender it into the Loꝛds hand, to the behoſe and vſe of him that ſhal haue the eſtate. The foꝛme of which ſurrender is commonly vſed to be thus. Surrender.

Ad hac Curiam venit A. de B. & ſurſum reddidit in eadem Curia vnum meſuagium, &c. in manus domini, ad vſum C. de D. & heredum ſuorum, vel heredum de corpore &c. Et ſuper hoc venit prædictus C. de D. & cepit de domino in eadem Curia meſuagium prædictum: Habendum & tenendum ſibi, &c. ad voluntatem domini ſecundum conſuetudinem manerij, faciendo inde redditus, ſeruicia, & conſuetudines inde prius debitas & conſuetas, &c. Et dat domino pro fine, &c. Et fecit domino fidelitatem. The forme of a ſurrender.

Theſe as I ſaid be called tenants by copie of court roll, becauſe they haue none other euidence to ſhew concerning their lands, ſaue onely the copies of the rolls of their Loꝛds court.

Neither can theſe Tenants ſue oꝛ be ſued foꝛ ſuch lands in the Kings Court, by writ oꝛ others wiſe. But if they will in any wiſe implead oꝛ ſue others foꝛ ſuch copie lands, they muſt doe it by way of plaint in ꝑ Loꝛds court after this foꝛme.

A. de B. quæritur verſus C. de D. de placito terræ, videlicet, de vno meſuagio, xl. acris terræ, iiij acris prati, &c. cum pertinentijs, & facit proteſtationem ſequi querelam iſtam in natura breuis domini Regis alibi ꝙ mortis anteceſſoris ad communem legem Pol' &c. Plegij de proſequendo F. O. &c. The forme of the plaint.

Now although ſome ſuch tenants haue an inheritance accoꝛding to the cuſtome of the manour yet in very deede they are but tenants at the will of

of the Lord. For as some men thinke, if the Lord will expell them, and put them forth, they haue no remedie at all, but to sue vnto their Lord by way of petition, desiring him to be good and gracious lord vnto them. For if they might haue any remedie by the law, then should they not be called (say they) tenants at the will of the Lord after the custome of the manour. But other men of no lesse learning and prudence, haue beene of contrarie iudgement, as Lord Brian chiefe Iustices, in the time of King Edward the fourth, whose opinion was alwayes, that if such a tenant by the custome (paying his seruices) be ejected and put forth by his Lord without cause reasonable, he may very well bring and maintaine an action of trespas against the Lord at the common Law, as appeareth termino Hillarij, Ann 21. E. 4. Also Lord Danby chiefe Iustice likewise, was of the same iudgment, as appeareth termino Mich. Anno 7. E. 4. where he saith, that the tenant by the custome, is as well inheritable to haue his land after the custom, as he is that hath a freehold at the common law: but the determination of this question, I remit to my great masters, which can lose the knots and ambiguities of the law. For as much as yet still of this matter, Causidici certant, & adhuc sub Iudice lis est.

Action of Trespasse.

Also ye shall vnderstand, that the vsage of some manour is, when the tenant will surrender his land to the vse of another, that he shall take a wand or a rod in his hand, and deliuer it to the steward of the court, and the steward shal deliuer the same wand in name of seisin, to him that shall take the land, and such a tenant is called a tenant

by

by the verge. Diuers other customes there be of surrendzing of Copie hold lands, which here for tediousnesse I will omit. And forasmuch as tenants by custome of the Manour, haue by the course of the common law no freehold: therefore they be called tenants of base tenure. Base tenure

Also if such a tenant letteth to farme his copie hold land for longer time then a twelue moneth and a day, without the Lords licence, it is a forfaiture of his land to his Lord.

And know ye, that if this tenant fell any timber that groweth vpon the land, but onely for the reparation of the same, this is waste and a forfaiture of his Copie hold.

Hitherto haue I treated of the first member of our diuision, that is to wit, of chattels; for as I said, all leases for terme of yeares, and at will, be accounted in the law, but as chatels, and be comprised vnder that name, saue that these be called chattels realls, whereas Kine, Oxen, Horses, Money, Plate, Corne, and such like, be called chattels personalls. Chattels reall and personall.

Now we will proceed to the explanation of the second member, that is to say, of free holds.

Free

FReeholds or franke tenements a man may haue in sundrie wise, for either he is seised for terme of his owne life, or for terme of another mans life. If he be seised for terme of his owne life, either he hath gotten such estate by way of purchase, or else the law hath intituled them therunto. I call it by purchase, whether he commeth unto it by his owne bargaining and procurement or by the gift of his friend: and I call it by the operation or intituling of the law, when a man marieth a woman that is an inheritrix, and hath issue by her, and she dieth, now shall he haue the lands during his life, by course of the law, and shall be called tenant by the curtesie of England.

Tenant by the curtisie.

Tenant in dower.

In like wise, if a man be seised in fee simple, or fee tayle of lands, and taketh a wife, and he dieth, the law giueth vnto the wife the third part of her husbands lands for terme of life, and she shall be called tenant in dower.

Tenant for terme of life. Chap. 7.

TEnant for terme of life, is he that holdeth landes or tenements for terme of his owne life, or for terme of an others life. Howbeit the most frequent and common manner of speaking is, to call him that hath an estate for terme of his owne life, tenant for life, and him that hath an estate for terme of an others life, tenant for terme dauter vie, that it to say, tenant for terme of an others life.

Ye shall note, that like as he that maketh the lease is called the lessour, and he to whome the lease

leafe is made, is called the lesse, so he that maketh a feoffement, is called the feoffor, and he to whom the feoffement is made, the feoffee.

Also if the tenant for terme of life, or tenant for terme of another mans life, doe waste, the lessor, or he in the reuersion, shall maintaine verie well an action of waste against him, and shall by the same recouer treble damages. Waste.

Finally, ye shall vnderstand that by an Act of Parliament made in the xxvij. yeare of our Soueraigne Lord King Henrie the eight, it is enacted, that no free hold, nor estate of inheritance, shall passe nor take effect by reason of any bargaine and sale, except that same be made by writing indented, sealed and enrolled in one of the Kings Maiesties Courts at Westminster, or else within the Counte where the land doth lie, before the Custos Rotulorum, and two Justices of Peace, and the Clerke of the Peace of the same county, or two of them at the least, of which the said Clerke shall be one, and that such inrolment be made, within six monethes after the date of such writing. And for the enrolment of euery such writing, where the land comprised therein, is not aboue the yearely value of fortie shillings, they shall take two shillings, that is twelue pence to the Justices, and twelue pence to the Clerke. And if the land be aboue the yearely value of xl. li. then they shall take fiue shillings, that is, two shillings and six pence to the Justices, and two shillings six pence to the Clerke, which shall inroll and ingrosse sufficiently in parchment such bardes and writings, and at euerie yeares end he shall deliuer the same to the Custos Rotulorum 2.

of

of the same countie, to remaine in his custodie among other records of the same countie, so that the parties resorting thither may see them. Provided, that this extend not to any tenements or hereditaments lying within any City or Towne corporat, wherein the Maiors, Recorders, or other officers haue authoritie, or haue lawfully vsed to enroll any euidences or writings within their precinct.

Tenant by the curtesie. Chap. 8.

TEnant by the curtesie of England, is he that hath maried a wife inheritrix, and hath had issue by her, and she is dead, in this case the Law of England permitteth and suffereth the husband of such wife, to receiue and keepe still all his wiues lands that she had either in fee simple, or fee taile, so long as he liueth. And this is by the curtesie, a vsance of England, for this thing is vsed in none other Country nor region. But in this, it is required that the child be vital, that is to say, be borne and brought forth into this world aliue. and therefore the common sayings is, and hath bin, that vnlesse the child be heard cry, the father shall not be tenant by the curtesie, for the onely proofe and argument of life in an infant borne, is the wagite and crying. Ye shall furthermore vnderstand, that vnlesse the husband be in actuall and reall possession of his wiues lands, and seised of them in her right, he shall not be tenant by the curtesie after her death. And therfore if lands descend to a mans wife, so that she is tenant in the law, and to euery mans actions, yet if

if the husband haue not made an actuall entry during couerture and matrimonie betweene them, he shall not by tenant by the curtesie, for it shall be reputed and iudged his folly and negligence that he would not enter in her life time.

Actuall entrie.

Otherwise it is of aduowsons, rents, commons and such other thinges, which forthwith when they descend, be in a man, or in a woman, without any entry or further ceremony of law.

Aduowsons, rents, commons.

Note, that if tenant by the curtesie of England will sucker, or make any wast in the lands or tenements that he so holdeth, he is punishable therefore, by an action of wast brought by him in the reuersion.

Wast

Also it is to be knowne, that of things that be in suspence, a man shall not be tenant by the curtesie, and therefore if a man be tenant in fee simple of certaine land, and hath intermarie with a woman that is the Degniorelle or Lady of the same and hath issue by her, and she dyeth, yet shall he not be tenant by the curtesie of the Lordshippe or Seigniory, because himselfe is tenant of the land and therefore the Lordshippe is suspended for the time: for a man cannot be both Lord and tenant of one thing: but if he had not beene tenant of the land, he should haue had the Lordship after the death of his wife, by the curtesie of England very well.

Lord & tenant.

Also note, that of a right onely, a man shall not be tenant by the curtesie: as if a woman sole seised in fee of lands or tenements, be disseised, and after take a husband, and they haue issue, and she die before any reentrie made, the husband shal not be tenant by the curtesie.

Right only without entrie.

Note

of the same countie, to remaine in his custodie among other records of the same countie, so that the parties resorting thither may see them. Provided, that this extend not to any tenements or hereditaments lying within any City or Towne corporat, wherein the Maiors, Recorders, or other officers have authoritie, or have lawfully vsed to enroll any euidences or writings within their precinct.

Tenant by the curtesie. Chap. 8.

TEnant by the curtesie of England, is he that hath maried a wife inheritrix, and hath had issue by her, and she is dead, in this case the Law of England permitteth and suffereth the husband of such wife, to receiue and keepe still all his wiues lands that she had either in fee simple, or fee taile, so long as he liueth. And this is by the curtesie, a vsbanitie of England, for this thing is vsed in none other Country nor region. But in this, it is required that the child be vital, that is to say, be borne and brought forth into this world aliue. and therefore the common saying is, and hath bin, that vnlesse the child be heard cry, the father shall not be tenant by the curtesie, for the onely proofe and argument of life in an infant borne, is the wagite and crying. Ye shall furthermore vnderstand, that vnlesse the husband be in actuall and reall possession of his wiues lands, and seised of them in her right, he shall not be tenant by the curtesie after her death. And therfore if lands descend to a mans wife, so that she is tenant in the law, and to euery mans actions, yet

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if the husband haue not made an actuall entry during couerture and matrimonie betweene them, he shall not by tenant by the curteſie, for it shall be reputed and iudged his folly and negligence that he would not enter in her life time. Actuall entrye.

Otherwise it is of auowsons, rents, commons and such other thinges, which forthwith when they descend, be in a man, or in a woman, without any entry or further ceremony of law. Auowsons rents Commons.

Note, that if tenant by the curteſie of England will suffer, or make any waſt in the lands or tenements that he so holdeth, he is punishable therefore, by an action of waſt brought by him in the reuersion. Waſt

Also it is to be knowne, that of things that be in suſpence, a man shall not be tenant by the curteſie, and therefore if a man be tenant in fee simple of certaine land, and doth intermarie with a woman that is the Seigniorelle or Lady of the same and hath issue by her, and she dyeth, yet shall he not be tenant by the curteſie of the Lordshippe or Seigniory, because himselfe is tenant of the land and therefore the Lordshippe is suſpended for the time: for a man cannot be both Lord and tenant of one thing: but if he had not beene tenant of the land, he should haue had the Lordship after the death of his wife, by the curteſie of England very well. Lord & tenāt.

Also note, that of a right onely, a man shall not be tenant by the curteſie: as if a woman sole seiſed in fee of lands or tenements, be diſſeiſed, and after take a husband, and they haue issue, and that die before any reentrie made, the husband shal not be tenant by the curteſie. Right only without entrie.

Note

Reversion.

Note further, that of a reuersion, a man shall not be tenant by the curtesie: as if a woman sole seised of land in fée, make a lease to S. for terme of life, and after taketh a husband, and they haue issue, and she die, liuing the lessee for terme of life, the husband shall not be tenant by the curtesie.

Of Tenant in Dower. Chap. 9.

Dower at the common law. Dower by custome.

TEnant in Dower, is shée that hath béene married to an husband that was during the matrimonie betwéene them, seised of lands or tenements in fée simple, or fée taile, which is now dead, and she seised of the third part of her husbands said lands for terme of her life: for by the common law of the Land, if the husband be at any time during ye couerture seised lawfully, whether it be by purchase, or descent, either in fée, or in fée tayle, and die, his wife shall be indowed by the course of the common law of the third foote. And in some places by an ancient custome, she shall be indowed of the moitie: yea and though her husband were neuer seised actually during the couerture; yet if the lands be cast vpon him by the law, so that the law calleth him tenant to euerie mans action it suffiseth the woman to demaund her dower: For it were vnreasonable that the negligence and slacknesse of entring of the husband, should hurt the wiues title.

Dower fro a tenant to euerie mans Action.

Tenant by the curtesie

Otherwise it is, as it is said before, of tenant by the curtesie: for if the landes descend to a woman couert, and the husband for slouthfulnesse or negligence doth not enter in his wiues life, he shall not be tenant by the curtesie, for by all laws the wife oweth obedience and subiection to her husband

husband, and therefore she cannot compel him to enter: but when lands descend to the wife, the husband onely hath power to enter at his pleasure.

And ye shall understand, that vnlesse the wife be aboue the age of nine yeares at the time of her husbands death, she shall not be endowed by the common Law. 9. Y.

But it is to be knowen, that a woman may by diuers wayes stoppe and preiudice her selfe of her dower: as if she commit any crime, for which she is attainted of treason, murder, or felonie, she shall haue in this case no dower, notwithstanding she hath obtained her pardon. A woman shall haue no dower. procurer murder, felonye.

Also, if after the death of her husband she taketh a lease for terme of life, of the same landes whereof she is indowable, she loseth her dower of the same. Moreouer, if she depart from her husband, and liueth in adulterie with an other man, and is not reconciled againe to her husband, without coheršion of the Ecclesiasticall power, she loseth her dower after her husbands death. She shall be also barred of her dower, if she will withhold from the heire, the charters and euidence, concerning that land whereof she asketh dower. But none other saue the heire, can withhold her dower for this cause. No dower.

It ought to be knowen also, of what things she may demand dower, and of what things not. Of Lands, Messuages, Indowsons, Rent charge, Rent seruices, or Seigniories in grosse, or otherwise of villaines, of commons certain of estouers certaine, of milles, and offices, or of the profit of them, she is dowable. But of commons

and eſtouers ſans number, alſo of annuities, of homages, of thinge of pleaſure, as of ſeruice, of paiment of roſes, and ſemblable, ſhee ſhall not be endowed.

There be yet two other kinds of dower, the one is called dowment ex aſſenſu patris, that is to ſay, by the aſſent of the father, and the other is called dowment de la plus beale part, that is to ſay of the fairest part.

Dowment ex aſſenſu patris.

Dowement ex aſſenſu patris, is when the father is ſeiſed of lands in fee ſimple, and his ſonne which is heire apparant, endoweth his wife at ꝑ church doze, when he is eſpouſed, of parcel of his fathers lands, with ꝑ aſſent of his father in writing, teſtifying the ſame aſſent, if in this caſe her husband die, ſhe may forthwith enter into ꝑ land ſo aſſigned vnto her without further procurement of proces of law, although the father of her ſaid husband be yet aliue, and in actuall poſſeſſion of the land. But if ſhe thus do, and take her to this endowment at the Church doze, ſhe cannot haue her dower alſo by the Common law of the third part of all her husbandes landes, or any part or parcell of them: how be it, if ſhe will refuſe this aſſignmẽt made vnto her at the Church doze, and demaund dower at the common law, ſhe may ſo doe verie well. A man may alſo indow his wife at the time of the eſpouſals, of his owne lands, the which he heth by his owne poſſeſſion, and that dower is called dower ad oſtium Eccleſiæ, that is to ſay, at the Church doze.

Dowment ad oſtium Eccleſiæ.

Dowment de la plus beale part.

Dowment de la plus beale part, that is to ſay, dowment of the fairest part ſhall be in this caſe, when a man is ſeiſed of lands which he holdeth of

of another man by Knights ſeruice, and of other lands which be of ſocage tenure, and hath iſſue, which is within the age of xiij. yeares, and die, and the Lord of whome the landes is holden by Knights ſeruice, entreth in the land holden of him, and the mother of the childe entreth into ſocage tenure, as gardaine in ſocage, if in this caſe the woman will bring a writ of dower againſt the Lord which is gardain in chiualry, ſhe may plead the ſpeciall matter, and ſhew how ſhe is gardain in ſocage, and hath ſo much land, & thereupon may the Court that ſhe may be ſuffered to endow her ſelfe of ſo much land, being in her own cuſtodie, as amounteth to the third part of the whole landes.

And then the iudgment ſhall be, that the gardaine in chiualrie ſhall retaine the land holden of him quit from the woman, during the nonage of the ward. After which iudgement and ſentence giuen ſhe may goe, & in the preſence of her neighbours, endow her ſelfe of the beſt part of that which is in her cuſtodie, amounting to the third part of the whole, and then is ſhe called tenant in dower de la plus beale,

Finally ye ſhall vnderſtand, that by a Statute made in the xxviij. yeare of our moſt dread ſoueraigne Lord, King Henrie the eight, it is enacted, that where diuers perſons haue eſtates made to them and to their wiues, and to the heires of the husband, or to the husband and wife, and the heires of their two bodies begotten, or the heires of one of their bodies, or for terme of both or one of their liues, or any other perſons and their heires, to the vſe of the Aũ 27. H. 8.

husband and wife, or to the wife alone for her ioynture: in euery such case the woman shall not be suffered to demaund any dowrie of the residue of her husbands lands, of whome she hath ioynture, against any tenant of the land. But in case she hath no such ioynter, then may she demaund her dowrie after the course of the common law. Prouided nenertheleſſe, that if such women be lawfully expulsed from their ioynter, or any part thereof, without fraud or coun, then shall they bee endowed of the residue of their husbands lands, for as much as the lands shall amount vnto, out of which they were so expulsed and put forth.

Prouided also, that if lands or tenements be assured to any woman after mariage for terme of life, or likewise in ioynture (except it be by act of Parliament) and the wife ouerline her husband, in whose time the ioynture was made, in this case the wife may refuse the lands so appointed vnto her in ioynture, and haue her dower at the common law, of such lands as her husband was seised of at any time during the couerture.

Also, if the husband committeth treason, murder, or felonie, for which he is attainted, the wife shall not haue the dower.

And note, that if the husband enter into religion, and is professed, the heire shall enter into the land, but the wife getteth no dower till the husband dieth. M.32.E.2.

And likewise, if a man seised of land taketh a wife that is an alien borne and dieth, she shall not be endowed, except she be made denizen by act of Parliament. T.3.H.6. And note, that where the wife

wife bringeth a writ of dower, and recouereth her right, she shall recouer no dammages, but where her husband died seised of the landes recouered.

right & not damages

A diuision of inheritance. Chap. 10.

Damages. Diuision of Estates.

HItherto haue I spoken of freeholds, now it remaneth to treat of inheritances, not that inheritances be no free-holds, for they be free-holds also: but the other estates of which I haue hitherto treated, be onely free-holds and of no higher nature, whereas an estate of inheritance, although it be a free-holde indeede, yet it is not so to be called by name, sith it is a far more excellent and greater estate. But ye shall vnderstand, that of inheritances some be of more amplitude and excellent then other some be, as that inheritance which is pure simple, and without limitation of what heires, which kinde of inheritance is called fee simple. But when I make a limitation of what heires, then it is called fee taple, and of which also be two sorts, as hereafter more at large shall be declared. Now therefore the nature of fee simple is set forth with our accustomed compendiousnes.

Of fee simple. Chap. 11.

Fee simple.

FEe simple is (as I saide) the most ample and large inheritance that can be in this Realme deuised or inuented, it is that which a man hath to him and his heires, simply without any further limitation, for whether they be of his owne body begotten or not, so that they be the next of his kin, and within the degrees it sufficeth

So then tenant in fee simple is he that hath lands or tenements, whether it be by purchase or by descent, to him & to his heires and assignes for euer. For if a man will purchase lands in fee simple, he must nedes haue these wordes his heires in his purchase, for these be the onely wordes that make the estate of inheritance. Therfore if lands be giuen to a man for euer, & no mention be made of his heires: he hath an estate but for terme of his life, because these wordes his heires doe lacke.

forme of fee simple.

Yet neuertheiesse, if a man by his testament doth deuise lands to an other, in such place or case where the custome or law will serue so to doe, though he maketh no mention of heires, but saith that he bequetheth to such a person such lands to haue and to hold to him and to his assignes for euermore, here an estate of inheritance doth passe, for in testaments the will and intent of the testator is to be pondered, and not the formall and prescript wordes of the law.

exceptions in Testaments.

Also these termes in the law, frank mariage, & frank almoign, that is to say free mariage & free almes, doe include in them wordes of inheritance.

frank mariage. frank almoign.

And therefore if I giue lands to a man with my daughter in frank mariage without further addition or mention of heires, this is an estate of inheritance, as shall be hereafter declared more plentiously. So likewise it is of landes giuen to an house Ecclesiasticall in pure and frank almes. Moreouer if land be giuen to a man and to his blood, or vnto him and to his seede, he hath in both cases an estate of inheritance, for in the last he hath a fee tayle, and in the other a fee simple. For this word seede, and blood, and such like do imply

wordes

wordes of inheritance,

Also if landes be giuen to a man and to his heires males, or females, hee hath by this gift a fee simple, because it is not expressed of what body the issue shall come.

What now it is to be seene who be said a mans heires in the law: ye shal therfore know that my brother or sister by the halfe blood, that is to wit by the fathers side, & not by the mothers, or contrariwise by the mothers side, and not by the fathers, shall neuer be mine heire, nor none that come of them. Neither my bastard can be mine heire, nor mine owne naturall father nor mother, nor grandfather, nor grandmother can be mine heire. For it is a principall & ground of the law, that inheritance may lineally descend, but ascend it may not. And therefore if I haue landes in fee simple, & die without issue of my body, my father cannot be mine heire, but my fathers brother or sister shall, and then if my vncle or aunt die seised without issue, my father shall haue the landes as heire to mine vncle, and not as heire to me, for that cannot be. But it may goe from me to mine vncle or aunt well enough, for that is not called a lineall ascension, but a collaterall descent.

The halfe blood.

A bastard shall be no heire.

A ground of the law.

Also you shall vnderstand that a lineall descent is, when the descent is conueyed in the same line of the whole blood: as grandfather, father, and son and so downe. And collaterall descent is of another branch, from aboue of the whole blood, as the grandfathers brother, or fathers brother, and so descending.

Lineall and collaterall descent.

And yee shall note, that by the common law of this Realme, the eldest son shall haue the whole

inheritance, and after him if he haue no issue, the second son, and so forth. And if I haue no sonnes but daughters, then shall all the daughters together inherit, which be called coparceners: but if I haue no issue at all, neither sons, ne daughters, then shall my eldest brother in heritage succede me: but if I haue no brother, then my sisters if I haue any, if not, my uncle by my fathers side, if the lands be of mine owne purchase, or if they discended vnto me from my father. And to be short, if there be none in life of my fathers side, the purchased lands shall goe to my mothers side, and if there can be found no heire neither by my fathers side, nor yet by my mothers, then shall it escheat, as they call it, to the Lord of whom it was holden, for euery land must needs be holden of some Lord, as shall be hereafter shewed. But if lands descend vnto me by my mothers side, then if I faile of issue, the lands shall discend onely to my heires of my mothers side, & neuer to myne heires of my fathers side, as one the contrary side, if I haue lands, or any tenements by descent from my father, or his blood, they shall neuer descend to my heires by my mothers side.

Copartners

Escheat.

Diuersitie.

And thus ye see a great difference in this behalfe, betweene purchased landes, and landes which descend from an auncestour.

A ground of the law.

If there be three sonnes, and the middle sonne purchase landes and die without issue, the eldest shall haue the lands, and not the yongest.

Also it is a principle in our law, that none can be mine heire of lands that I holde in fee simple, vnlesse he be mine heire by the whole blood, that is to say, both by father and mother, for if a man hath

hath issue, two or three sons by sundry wives, and the eldest purchaseth lands in fee and dieth without issue, his halfe brethren, I meane those that be not his brethren both by the fathers side, and mothers side, shall not haue the land, but it shall goe to his vncle. Likewise if a man hath by his first wife a son, and a daughter, and by his second wife another sonne, and the sonne by the first wife purchaseth lands in fee simple, and dyeth without issue, the sister germain, that is to say, both by fathers side and mothers, shall haue the lands by descent as heire to her brother, and not the ponger brother, forasmuch as the ponger brother cannot in this case be heire of his elder brother, because he is no brother germain vnto him. Otherwise it is of lands or other hereditaments intailed, as shall be hereafter specified.

Also if a man be seised of lands in fee simple and hath issue a son and a daughter by one wife, and after the death of his first wife, a son by another wife, and dyeth, and the eldest son entreth into the lands, and after he dyeth without lawfull issue of his bodie, the daughter shall haue the lands and not the yongest sonne, and yet the yongest son is heire to his father, but he is not so vnto his brother. But if in this case the eldest sonne had not entred after the death of his father, but had dyed before any entrie made by him, then shall not the sister germain enter, but the ponger brother is heire to his father, because the eldest brother was neuer in actuall possession, which is requisite to the person that claimeth to be heire collaterally.

Vnto the lineall heires, it suffiseth that the ancestour

auncestour should haue bene heire, if he had lined I meane as thus: A man seised of landes and hath issue a son and a daughter by one wife, and after ward a sonne by an other, he dieth, and after his death the eldest sonne entreth not, but dyeth without issue before he can make actuall entrie, here in this case his sister shall not haue ꝑ lands as heire to her brother, because her brother was not in actuall possession, but the yonger brother shall haue them, as heire to his father: yet if the eldest son in that case had left behind him issue of his body, whether it had been sonne or daughter, this issue notwithstanding that the father of the issue was neuer possessed either actually or in the law, shall haue the lands and shall conuey his descent from his father: The cause hereof is this, that the son or daughter is lineall heire, whereas the brother, sister, uncle, aunt &c. be heires collaterall, and ye shall obserue a diuersitie.

Diuersitie.

I call an actuall possession, when a man entreth indede into lands, which be to him descended, but a possession in law is called when lands be descended to a person, & he hath not yet really & actually entred into them. For notwithstanding that he is not in actual possession, yet he is possessed in the law, that is to say, in the eye and consideration of the law he is deemed to be possessed, forasmuch as he is tenant for euery mans action that will sue for the said lands, or else assuredly there should ensue an intollerable inconuenience, as we shall more copiously open in an other place.

Hæreditas quid sit.

Ye shall furthermore vnderstand, that this word inheritance, is not onely to be accommodate and applied to that which commeth by descent or succession

ession from a mans ancestors or predecessors, but also to every purchase in fee simple or fee tayle.

And note, that a man can haue no larger or greater estate then fee simple.

Of fee tayle. Chap. 12.

YE shall vnderstand, that before a certaine Statute called the Statute of Westm. 2. ther was no estate tayle, but all was fee simple, either purely, that is to say without condition or at the least way conditionally, as appeareth by the preamble of the said estatute, but now sithence the promulgation of the estatute, diuers formes of estates tayle haue risen. Westm. 2. Chap. 1. Diuision.

Fee tayle is, when it is prescribed and limited in the gift what sort of heires, and by whom engendred, shall inherit.

As for example, I giue landes to a man and to his heires, and go no further, this is a fee simple: but if I make a limitation, and ad of his body begotten, now it is a fee tayle, that is to say, a fee or inheritance limited, prescribed, determinate or alligned.

So that if I giue landes to a man and to his heires, he hath fee simple, but if I giue lands to him and to his heires of his body lawfully begotten, he hath but a fee tayle, forasmuch as I appoint, limit, prescribe, & expresse what heires they shall be, & for lack of such heires the gift shall be expired and worne out, and the lands shall be reuerted againe to the giuer or his heires.

But ye must obserue and note, that there be two kindes of fee tayle. There is a generall tayle,

tayle, and there is a speciall tayle.

Fee tayle generall is, where lands be giuen to a man and to his heires of his body begotten, without any mentioning and expressing by what woman they are begotten.

Generall tayle.

And therefore if a man be tenant in the generall tayle of lands, and taketh a wife and hath issue by her, and she dieth, and afterward he taketh another wife, of whome he hath also other issue by her, either of these issues is inheritable to this land intailed. But if I expresse in the gift by what woman the heires shall be procreated and ingendred, then it is an especiall tayle: as for example to make the thing plaine, if lands be giuen to a man and to his heires of his body lawfully begotten by Margaret his wife, this is an especiall taile, for the issue of him begotten by another woman, shall neuer inherite by force and vertue of the tayle. Likewise it is if lands be giuen to a woman and to the heires of her body lawfully begotten (and shew not by what man) this is a generall tayle, but if I goe forward & say by such a man her husband, then it is an especial tayle.

Especiall tayle.

Also if I giue lands to a man and to his wife, and to the heires of their two bodies lawfully begotten: this is an especiall tayle, as well in the husband as in the wife.

Franke mariage.

Semblable it is, if a man giueth lands to another man with his daughter, or kinswoman in franke mariage, this word (franke mariage) implieth an estate taile especiall, and in this case as well the man as the woman hath an estate in the speciall tayle.

But if I giue lands to a man & to such a woman

man, and to his heires that he hath begot of her, here the woman hath an estate but for terme of her life, and the husband an estate in the speciall tayle. And likewise it is in the womans behalfe: as if I giue lands to a man and to his wife, and to her heires of her body by her said husband engendred, he hath an estate but for terme of life, & she an estate in the speciall taile. But in both cases, if I had said to the heires, & not to his or her heires, then should either of them haue had an estate in the speciall tayle, because this word heires is as well referred to the one, as to the other.

Descent by heire males

We shall also understand, that if lands be giuen to a man, and to the heirs males of his body, this is an estate taile, and in this case, the heire female shall neuer inherit it.

Also, if a man hath issue and dieth, and landes be giuen to him and to his heires of his body begotten, this is a good estate taile, although the father were dead at the time of the gift. Finally, it is to be noted, that of lands which a man hath in fee simple, the possession of the brother, shall cause the sister germaine, that is to say, the sister both by the fathers side and mothers to inherit: and in this case, the brother by the halfe blood shall not inherit, as heretofore was said, but of landes which be intailed otherwise it is. Therefore, if a man be seised of lands in the generall tayle, and hath issue by his first wife a sonne and a daughter; and also a sonne afterward by another wife, and dyeth, and the eldest sonne entreth into the lands, and after dyeth, the sister germaine to the eldest sonne shall not haue the lands, but the yonger brother of the halfe blood, because whosoeuer hath

shall inherit land or any other hereditaments in tayle, must claime them as next and immediate heire not to him that dieth last seised of the lands, but to him to whom the lands were first giuen: vnto whom in the case before remembred, is the sonne heire, and not the daughter.

Diuersitie. Thus we shall marke a great diuersitie betweene the forme of succession in the landes of fée simple, and the forme in fée tayle.

Tenant after possibilitie of issue extinct. Chap. 13.

When lands, tenements, or other hereditaments, be giuen to a man and to his wife, and to the heires of their two bodies lawfully begotten, if in this case either of them chance to die before they haue issue betweene them, he or she y ouerliueth, is still tenant in tayle, but without possibilitie of any issue that can be heire to these landes or hereditaments thus intailed, & for this cause he or she thus ouerliuing, is called tenant in taile after possibility of issue extinct, for in such a tenant is all possibility of issue that may be inheritable to these landes by force of the gift in taile vtterly extinct or quenched, and by his or her death the estate taile shall expire, cease, & be abolished for euer, and shall revert and turne againe to the giuer or donour from whence it came.

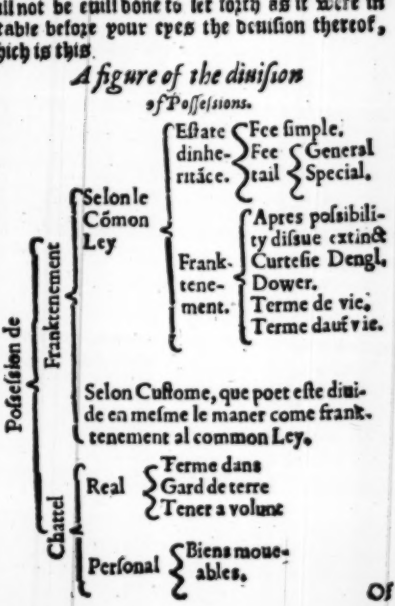
Dispunishable of waste. Yet forasmuch as the tenante after possibilitie of issue, had once an inheritance in him, he shall not be punished by an action of waste, though he maketh neuer so much waste in the lands and tenements, whereas yet in effect he is but a tenant for terme of life. But if this tenant doth alien, in

fée,

for, such lands, he in the reuersion may enter for Forfaiture. the forfeiture.

And this for estates at this present time shall suffice. But to the intent that ye may the more easily comprehend all the members of the diuision of possessions and estats which men may haue in lands, tenements, and other hereditamentis, it shall not be euill done to set forth as it were in a table before your eyes the deuision thereof, which is this.

A figure of the diuision of Possessions.



Of

HItherunto I haue made a compendious & shoꝛt declaration of estates of all soꝛtes. But where I saide, that among sisters there is no pꝛerogatiue oꝛ pꝛeheminence concerning the inheriting of their auncestours lands, but that they shall be altogether inheritours, and make as it were but one heire; it is expedient to make a further declaration and pꝛoces in this behalfe, and to shew how, and in what maner this partition shall be made.

Diuision of Parceners at the common Law, and Parceners by custome.

But yee shall vnderstand, that there be besides Parceners at the common Law, which be onely sisters, also Parceners by custome which is amongst bꝛothers, contrarie to the course of the Common Law; and this custome is in some places of Kent, and in other places where lands and tenements be of the tenure of Gauelkind.

Yee shall therefoꝛe know, that when a man is seised of land in fee simple, oꝛ fee taile, and hath no issue but daughters, and die, and the daughters doe enter into the landes thus descended vnto them, now they be called Parceners oꝛ coheires, & by a writ called De partitione facienda, bꝛought by one of them against the others, they shall be constrained by the law to suffer an egall partition to be made of the lands betweene them.

Writ de Partitione facienda.

Partition in diuers maners.

Now partition may be made in sundꝛy waies. One way is, when they themselues doe make partition betweene them of the whole heritage, and doe agree vnto the same, and doe enter euery one into her part so allotted vnto her.

Another way is, when by all their agreement and consent, one common friend doth make the partition.

partition. In which case the eldest sister shall haue the first election, and after her the second sister, and so forth. But if they agree that the eldest sister shall make the partition, and she maketh it, then the eldest shall not chuse first, but shall suffer all her sisters to chuse before her, as it is thought

There is also an other forme of partition, which is, equally to diuide the lands into so many parts as there be coheires or parceners and to write euerie part so diuided in a seuerall scroule of paper, & so put the said scroules in a boxe, or inclose them seuerally in balls of ware, & the eldest sister to chuse which ball she will, or to put her hand into the boxe, and to take a scroule, and to hould her to her chaunce and allotment, and so consequently euery sister after other. By scrolles. By Ballots.

And ye shall note, that partition by agreement may aswell be made by rude and bare words without writing as by writing. Nota.

And if any of the parceners will not suffer any partition to be made, then may the other that would haue partition, purchase a writ called De partitione facienda, against them that refuse partition, to compell the same to suffer partition to be made accordingly, and then by iudgement of the Court, the shirife by the seuerement and oath of tweine men, shall make partition betweene them, and shall assigne to each sister her portion, as he shall thinke good, without giuing any election or choise to the eldest. A writ de partitione facienda.

And if two manours or meases happen to descend to two sisters, and the manours be not of egall value, then may she, to whom the lesse manour or meale is allotted, haue assigned vnto her

a rent proportionably out of the other manour, for the which rent she and her heires may distraine of common right, though they haue no writing thereof.

Distresse of common right.

Finally, ye shall vnderstand, that if a man be seised of landes in fee simple, and hath issue two daughters, and giueth with one of his daughters to an other man that shall marry her, the third or fourth part of his land in frank mariage, and dyeth, if in this case ỹ daughter that is in this wise bestowed and aduanced, will haue her portion of her fathers heritage, she must part her land giuen vnto her in franke mariage in Hochpot new againe. I meane she must be contented to suffer her said landes to be commixed and mingled with the other landes of which her father died seised in fee simple, so that an equall diuision may be made of the whole, or else, she shall haue no part of those landes of which her father died seised. But if her father had made vnto her a common gift in taile, or feoffement in fee, she should not needs to put her landes in Hochpot, but may very well kepe and retaine them still, and also haue as good part of the rest of the landes of which her father died seised, as her other sister or sisters haue. For a gift in frank mariage, is accompted the most free and most liberall gift that can be, and that gift which the law iudgeth to be only for the aduancement and bestowing of the daughter, where as feoffements in fee simple, and also common gifts in tayle be accustomably for other causes, and for the aduantage rather of the giuer or feoffour, then of the taker.

Hochpot.

Frank mariage.

Also if parceners make partition of landes be-

ing

ting within age, that partition is void.

And if parceners in fee simple make partition, and the part of the one is better then the other, being of full age of xxi. yeares, then the partition is good and cannot be defeated: but if it be of lands in fee taile, the one part being better then the other, the partition may be defeated by their heires.

phrase in fee Simple taile.

Of Ioyntenants. Chap. 15.

HItherunto verely haue we spoken of Coheires, called parceners at the common law, which as is heretofore declared, doe come to landes and other hereditaments ioyntly by the course, operation and act of the law. Now shall we speake somewhat of them which either ioyntly or severally come to lands, tenements, or other hereditaments by their owne purchase, act, procurement and working. And of these, they that come to them by ioynt title, way, or colour, be called iointenants, but they that come by severall titles, wales, or colours, to lands or tenements be named tenants in common.

Tenant in common.

So then, if a man being seised of lands or tenements, or other hereditaments, shall thereof infeoffe two, three, foure, or more, to haue and to hold to them in fee simple, fee taile, or for terme of their liues, or for terme of an others life, these persons so enfeoffed and seised, be called Ioyntenants. Also if two or moe doe expell and disseise an other man of any landes or tenements to their owne behoofe and vse, these Disseisours and wrong doers are nowe become Ioyntenants,

 because

because by their owne act they come iointly to this land. But if they doe disseise an other man to the vse onely of one of them, in this case they be not iointenants: but he to whose vse the disseisin is made, is tenant alone of the same, and the others haue nothing in the tenancie, but be called aydours or coadiutors to the disseisin.

Disseisin. And ye shall vnderstand, that a disseisin is properly, where a man entereth into any lands or tenements there where his entrie is not lawfull, and putteth out him which hath the free-hold of the same.

Suruiuor taketh place. And ye shall furthermore know, that the nature of iointenancie is, that he which surmaeth & ouerliues the other, shall haue to himselfe alone the whole and entire tenancie, according to that estate which he should haue had if the iointure had beene continued: as for example, three iointenants be of lands in fee simple, & the one hath issue and dieth, in this case the two which doe ouerliue their fellow, shall haue the whole landes betweene them, & the issue of him that is departed getteth nothing. And if the second iointenant hath also issue and die, the third which hath ouerliued them both, shall now haue and enioy the whole, to him and to his heires for euermore.

Ius accrescendi.

Diuersitie. But otherwise it is of coheires which in our law are called parceners. For if there be three such coheires & parceners, & before any partition made, the one haue issue a son or a daughter and dieth, her portion shal descend and fal to her child and shall not run amongst the other ioint heires or coparceners. Howbeit if such parcener or coheire had died without issue, then should his portion

portion haue descended to his coheirs. But how? not by force of survivour or overliving, which in latine is called Ius accrescendi, but by verie descent: for where any of the coheires die without issue, who can be heire to him or her so dying, but the other coheires to him or her so dying, or the rest of the coheires if there be many?

And like as this right of survivour or overliving, holdeth place amongst iointenants of lands and tenements so in like maner it holdeth place amongst them which haue ioint estate or possession with others of chattels, whether they be reall or personall. As (for example) if a lease of lands or tenements be made to many for terme of certaine yeares, the overliuer or overliuers, shall haue the whole during the terme by force of the same lease. So of chattels personall, if an Horse, Ore, Graine, or other such personall chattell be given to many, he which overliueth shal haue the same alone. In semblable wise it is of debts and duties. For if an obligation be made to many for one debt, and of some other couenants and contracts, the law is likewise so.

Iointenants of reall and personall goods.

Also some iointenants may be which may haue ioint estate and be ioyntenants for terme of their liues, and yet haue seuerall inheritances.

As where landes be given to two men and to the heires of there two bodies ingendred, in this case, these two persons haue ioynt estate for terme of their two liues. And yet they haue seuerall inheritances. For if the one haue issue and die, the other that surviueth shall haue all by force of the survivour for terme of his life. And if he that survieth hath also issue and die, then

Iointenants of seuerall inheritances.

the issue of the one shal haue the halfe of the lands and the issue of the other shal haue the other halfe and they shall not be iointenants, but tenants in common: and the cause and reason why such doubtes in such cases haue a ioint estate for terme of their lines, is for that at the beginning the lands were giuen to them two, which words without more saying, make a ioint estate to them for terme of their lines: for if a man will let land to another by deede or without deede, not making mention what estate he hath, and of this maketh liuerie of seisin, in this case the lesse shall haue an estate for terme of his life. And if he haue no liuerie of seisin, he is tenant at will. And so forasmuch as the lands were giuen vnto them, they haue a ioint estate for terme of their lines. But the cause why they haue seuerall inheritance is this, for that they cannot by possibility haue an heire betweene them ingendred, as a man and woman may haue: where for the law will that their estate and their inheritance shall be such as reason will, after the forme and effect of the words of the gift, and that is to the heires that the one ingendreth of his body, by any of his wiues, and to the heires that the other ingendreth of his body by any of his wiues. So it behoueth by necessitie of reason, that they haue seuerall inheritances And in such case if the issue of one of them after the death of them both, both die, so that he hath no issue aliue of his body ingendred, then the donor which gaue the land, or his heires, may enter in the halfe as in his reuersion, though the other hath issue. And the cause is, that forasmuch as the inheritances

Tenants in common.

be

be seuerall, therefore the reuersion in the law is seuered, and the suruiuour of the issue of the other shall hold no place to haue the whole. And as it is said of males, in the same maner it is where lands be giuen to two females, and to the heires of their two bodies begotten.

Also if lands be giuen to two, and to the heirs of one of them, this is a good iointenancie, and the one hath a freehold, and the other hath a fee simple, and if he which haue fee simple die, he that hath the freehold shall haue the whole by the suruiuour for terme of his life. Suruiuour holdeth no place.

And if these two iointenants ioyne in a gift in the taile to a stranger, reseruing a rent to him that hath an estate but for his life, this reseruation is voide to make a tenure. Likewise it is where tenements be giuen to two and the heires of the body of one of them ingendred, the one hath a free hold and the other fee taple.

Note, if two ioyntenants be seised of an estate of fee simple, and the one granteth a rent charge by his deede to an other, out of the which to him belongeth, in this case during the life of the grantour, the rent charge is good and effectuall, but after his decease the rent charge is voide, as to charge the lands: for he that hath the land by the suruiuor, shal hold all ye land discharged: the cause is, for that he which suruiueth, claimeth to haue ye land by the suruiuor, and not by descent of his fellow. But otherwise it is of parceners, or coheirs for if there be two parceners in fee simple, and before any partition be made the one chargeth that, that to him belongeth by his deed of a rent charge Rent charge granted dy a Iointenant. Diuersitie.

Suruiuor cōs to lād, unchargeed but not the parceners.

and dieth without issue, here that which to him belongeth, descendeth to the other parcener, and in this case the other parcener shall hold the land charged, because he commeth to the halfe by descent as heire.

Deuise by testament.

Also if there be two iointenants in fee simple within one borough where the lands and tenements within the same borough be deuisable by testament: if the one of the said iointenants deuise that which to him belongeth by testament, and die, this deuise and legation is void. And the cause is, for that no deuice may take effect till after the death of the testator which bequeathed and deuised the same, and by his death al the land incontinent commeth by the law to his fellow that survyueth, by the survyuor, which neither claimeth nor hath any thing in the land by the deuice, but in his owne right by the survyuor after the course of the law, and for this cause such a deuice is void.

A ground of the law.

But otherwise it is of parceners seised of tenements deuisable in such case of deuise, for the cause above remembred. And it is commonly said, that euery iointenant is seised of the land that he holdeth iointly per my & per tout, that is, through out and by all. And this is as much to say, that he is seised by euery parcell and by all: which saying is true, for in euery parcel and part and throughout all the lands and tenemẽts he is iointly seised with his fellow.

And therefore if the one iointenant make a feoffement to his companion, that is void, because he can make no liuerie of seisin to him.

Diuersitie.

Also if two iointenants be seised of certaine lands in fee simple, and the one letteth that, that to him

him belongeth to a ſtranger for terme of xl yeres and deth within the terme, in this caſe after his death the leſſe may enter and occupie the halfe to him letten during the ſaid terme, though the leſſee neuer had poſſeſſion of it in the life of the leſſor by force of the leaſe. And the difference betweene the caſe of the grant of a rent charge, and this caſe is this, that in the grant of a rent charge by a iointenant, the landes or tenements abide allway as they were afore, without that, that any hath right to haue parcell of the tenements but themſelues, and the tenements abide in ſuch plite as they were before the charge. But where a leaſe is made by a iointenant to an other for terme of yeares, incontinent by force of the leaſe, the leſſee hath right in the ſame land, that is to ſay, of all that, that to his leſſor belongeth, by force of the ſame leaſe, during his terme. And if the leſſor in this caſe die, the other iointenant ſhall haue the rent or ſerme during the ſaid terme, becauſe the reuerſion is come to him by ſurmour. Finally, if a ioint eſtate be made of land to the huſband and wife, and to a third perſon, in this caſe the huſband and the wife haue not in the law in their right but the halfe and the third perſon ſhal haue as much as the huſband and the wife haue, that is to ſay, the other halfe. And the cauſe is, for that the huſband and wife be but as one perſon in the eye of the law. And it is here in like caſe as if an eſtate be made to two iointenants, where the one hath by force of the iointure the one halfe, and the other the other halfe. In ſemblable wiſe it is when an eſtate is made to the huſband and wife, and to other two men, in this caſe the huſband and

+ Diuerſitie, betweene a graunt of a rent and leaſe.

and the wife haue not, but the third part, and the other two men the other two parts.

Also if two or three together disseise an other of lands and tenements to their owne vses, then such disseisors be called iointenants.

Here shall be said of this matter touching iointenants in the next chapter.

Tenants in common. Chap. 16.

TEnants in common (as I said before) be they that haue landes or tenements in fee simple, fee taile, or for terme of life, which haue such lands and tenements by seuerall titles, and not by one ioynt title, and none of them knoweth that which is seuerall to him. And in this case they ought by the law before partition made betweene them to occupie such lands and tenements in common, and vndiuided, and to take the profits in common. And because they come to such lands and tenements by seuerall titles, and not by one selfe ioynt title, and their occupation and possession in the same is among them in common, they be called tenants in common, or tenants pro indiuiso. As for example, if a man enfeoffe two iointenants in fee simple, and the one of them alieneth that, that to him belongeth to an other in fee, now the other iointenant and he to whom the alienation was made, be tenants in common, for that they be seised of such tenements by seuerall titles: for the one commeth to the one halfe by the feoffement of the iointenant, and the other hath the other halfe by force of the first feoffement made to him and to his first fellow: and so they be in by

seuerall

Diffinition of fee onely

Iointenants, wch a

fee simple

fee taile

Iointenants in fee simple, and fee taile, how they ought to make their feoffments.

Iointenants in fee simple, and the one giueth that, that vnto him belongeth to another in the taple, the donee and the other iointenant be tenants in common.

Iointenants in fee taile.

Tenants in common.

Tenants in common of lands or tenements in fee simple, and fee taile, how they ought to make their feoffments.

Tenants in common.

Tenants in common.

Tenants in common

Iointenants

is of tenant for terme of life. Therefore if two iointenants be in fee, and the one letteth to a man that, that vnto him belongeth for terme of life, and the other iointenant letteth that which to him belongeth, to an other for terme of life also, these two lessees be tenants in common for terme of their liues. Also if a man let lands to two men for terme of life, and one of them granteth all his estate to another, then that other tenant for terme of life, and he to whom the grant is made, shall be tenants in common during the time that both the lessees be alue.

Note, if there be two iointenants in fee, and that one letteth that, that vnto him belongeth, to another for terme of life: the tenant for terme of life during his life, and the other tenant that did not let, be tenants in common. And vpon this case a question may rise, as thus. Let the case be that the lessor hath issue and dieth, liuing the other iointenant his fellow, and liuing the tenant for terme of life, the question is whether the reuersion of the halfe that the lessor hath shall descend to the issue of the lessor, or whether the other iointenant shall haue it by the survivour or no. And some haue said that the other iointenant shall haue the reuersion by the survivour, for as much as when the iointenants were iointly seised in fee simple, though one of them made an estate of that, that vnto him belongeth for terme of life, and though he hath severed the franketenement of that that to him belongeth by the lease, yet he hath not severed the fee simple.

Question.

But the fee simple abideth to them iointly as it was before. And so it seemeth vnto them, that the

the other ioynt tenant which surmiseth shall haue the reuersion by the surmisour. But other haue thought the contrarie, and this is their reason: when one of the ioynt tenants letteth that which vnto him belongeth to an other for terme of life, by such lease the frankstenement is seuered from the ioynture. So that the reuersion that is dependant vpon the same frankstenement is seuered from the ioynture. Furthermore, if the lessor had reserued to him a yearly rent vpon the lease, the lessor only should haue the rent, which is a proofe that the reuersion is onely in him, and that the other hath nothing therein.

Also if the tenant for terme of life were impleded, and make default after default, the lessor shal be onely hereupon receiued to defend his right, and not his fellow. Which proueth the reuersion of the halfe to be onely in the lessor, and so consequently, if the lessor die, liuing the lessee for terme of life, the reuersion shall descend to the heires of the lessour, and shall not come to the other iointenant by the surmisour after these mens opinions, yet it is doubtfull. But in this case if the iointenant that hath the frankstenement, haue issue and die, liuing the lessor and the lessee, then it seemeth that the issue shall haue the halfe in his demesne as of fee by descent, forasmuch as the frankstenement may not by nature of the ioynture be annexed to a reuersion: and it is certain that he that made the lease was seised of the halfe in his demesne as of fee, and that none shall haue any ioynture in his frankstenement. So that this shall descend to his issue. Reſceit. Quære.

If three iointenants be, and the one releaseth by

by his deede to one of his fellowes, all the right he hath in the land, then hath he to whom the releafe is made, the third part of the lands by force of the releafe, and he and his fellow fhall hold the other two parts iointly. And as to the third part that he hath by force of the releafe, he holdeth it with himfelfe and his fellow in common.

Releafe. And it is to wit, that fometime a deed of releafe fhall take effect to put the eftate of him that made the releafe, in him to whom the releafe is made: as in the cafe aforefaid.

Alfo if a ioynt eftate be made to the husband and wife and to the third perfon, and the third perfon releafeth his right that he hath to the husband: then hath the husband the halfe which the third perfon had and the wife of this hath nothing Semblably, if the third perfon had releafed to the wife not naming the husband in the releafe, then fhould the wife haue the halfe that the third perfon had, and the husband nothing of this but in the right of his wife, becaufe fuch releafe fhall inure to put the eftate in him to whome it was made, of all that that belongeth to him that made the releafe. Againe in fome cafes releafe fhall enure and ferue to put all the right that a man hath that made the releafe in him to whom it is made. As a man being feifed of certaine lands is diffeifed by two diffeifors, if the perfon diffeifed by his deede releafe all his right to one of the diffeifors, then he to whom the releafe is made fhall haue and hold all to him alone, and put out his fellow out of the occupation of it. And the caufe is, for Diuerſitie. that the two diffeifors were feifed by wrong by them done againſt the law, and when one of them getteth

getteth the release of him that had right to enter, his right resteth in him to whome the release is made, and in such plight as if he that had the right had entred and infeoffed him of the same. And the cause is, for that he that had before an estate by wrong, hath now by the release a rightfull estate.

And in some case a release shall inure and take effect by way of extinguishment, and such a release shall helpe the tenant to whome the release was not made, as well as him to whom it is made: as if a man be disseised, and the disseisor maketh a feoffement to two men in fee, if the person disseised releaseth to one of the feoffees in fee by his deede, then such release shall inure to both the feoffees, because the feoffees haue their estate by the law, that is to say, by the feoffement, and not by wrong done to any other. Release by way of extinguishment.

And in like maner, if the disseisour make a lease to a man for terme of life, the remainder ouer to another in fee, if the disseisee will release to the tenant for terme of life all his right, this release serueth as well to him in the remainder as the tenant for terme of life. And the cause is, for that the tenant for terme of life commeth to his estate by the course of the law, and for this cause the release shall inure and take effect by way of extinguishment of the right of him that hath released. And by this release the tenant for terme of life hath no greater estate then he had before the release made vnto him, and yet the right of him that released is all vtterly extinct and gonne. Wherefore forasmuch as such a release cannot inlarge the estate of the tenant for terme A release shall inure to him in the remainder.

terme of life, it is reason, that it shall serue him in the remainder.

Also, if there be two parceners, and the one alieneth his part to an other, the other parcener and the alienee be tenants in common.

Tenants in common by title of prescription.

Furthermore, tenants in common may be by title of prescription, if that one & his auncestors or they whose estate he hath in the halfe, haue holden in common the same halfe with the other tenant that hath the other halfe, and with his auncestors, or them whose estate he hath as vndiuided, time out of minde. And ye shal marke, that in

Actions seuerall.

some case tenants in common ought to haue of their possession seuerall actions, and in some case they shall ioyne in one action: for if there be two tenants in common & they be disseised, they ought to haue against the disseisor two assises, and not

Assise.

one assise. For euery of them ought to haue an assise of his halfe, because they were seised by seuerall titles. But otherwise it is of Iointenants: for if there be xx. iointenants, and they be disseised, they shall haue in all their names but one assise, because they haue but one ioynt title.

Assise.

Also if there be three iointenants, of whom the one releaseth to one of his fellowes all the right he hath, and afterward the other two be disseised of the whole, in this case they shall haue in both their names one assise of the two parts: And as to the third part, he to whome the release was made, ought to haue thereof an assise in his owne name, because as to the third part he is tenant in common.

Diuersitie.

Also as to sue actions that touch the realtie, there is a diuersitie betweene parceners that are

in

in by diuers discents, and tenants in common. For if a man seised of certaine lands in fee, hath issue two daughters, and die, and they enter into the landes as coheires, and each of them haue issue a sonne, and dye without partition made betweene them, so that the one halfe descendeth to the sonne of thone parcener, and the other halfe to the sonne of the other, and they enter and occupie in common, and be disseised, in this case they shall haue in their two naines one assise, and not two assises. And the cause is, though they come in by diuers descents, yet they be coheires and parceners. Also if two tenants in common of certain lands in fee, giue the same to another man in the tayle, or let it to another for terme of life, yeelding an annuitie, or certaine rent, or a pound of pepper, or an hauke, or an horse, and they be seised of these seruices, and afterward all the rent is behind, and they distraine for it, and the tenant maketh rescous, in this case as to the rent and ye pound of pepper, they shall haue two assises, and as to the hauke, and the horse but one assise. And the cause why they haue two Assises as to the rent and pound of pepper is, for that they were tenants in common by seuerall titles, and when they made a gift in the taile, or lease for terme of life, sauing & reseruing to them the reuersion, and yeelding to them certaine rent, this reseruation is incident to their reuersion. And because their reuersion is in common and by seuerall titles, euen as their possession was before the rent and other things which may be seuered, and which were to them reserued vpon the gift, or vpon the lease which be incident by ye same to the reuersion

Rescous.

Seruices & rents reserued not seised.

Plaint in assise.

therefore such things so severed be of the nature of the reuersion. Wherefore it behoueth that the rent and the pound of pepper which may be seuered to be then in common by seuerall titles. And of this they shall haue two assises, and euery of them in his assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of pepper. But of the hanke, and the hozle, which cannot be seuered, they shall haue but one assise, for it were an absurdetie and a thing inconuenient to make a plaint in assise of the halfe of an hanke, or of the halfe of an hozle. In like manner it is of the other rents and seruices that tenants in common haue in ground by diuers titles.

Personall action.

And ye shall vnderstand, that concerning actions personals, tenants in common ought to haue them iointly in all their names, that is to say, of trespasse, or offences that touch their tenements in common, as of breaking of their houses, breaking of their closes, and pastures, wasting and defoiling of their grasse, cutting of their woodes, and of fishing in their ponds, and such other, and they shall recouer iointly damages, because the action is in the personaltie and not in the realtie.

Damages.

Tenants in common shall haue one action of debt.

Also if tenants in common make a lease of their tenements to another for terme of yeres, yelding vnto them yearely a certaine rent, if the rent be behind, they shall haue one action of debt against the lesee, and not diuers actions, because the action is in the personaltie. But in an auowrie for the said rent, they ought to be seuered, because it is in the realtie, as be assises.

Of

Of Chattels. Chap. 17. in Common.

IT is to be knowne, that as there be tenants in common of lands or tenements: so there be tenants in common of possessions and propertie of chattels, aswell reall as personall. Of reall, as if a lease be made of certaine lands to two men for terme of twentie yeares, and when they be thereof possessed, the one granteth that, that vnto him belongeth, during the terme to an other, he to whom the grant is made, and the other shall hold and occupie in common.

Also if two iointenants haue the ward of the body and of the lands of an heire within age, and the one of them granteth to another that, that vnto him belongeth of the same ward, then he to whome the graunt is made, and the other that granteth not, shall haue and hold it in common. Iointenants of a ward.

Of chattles personals: as if two haue a ioynt estate, either by gift, or by buying of an Horse, or of an Oxe, or such like, and the one of them granteth that, that to him belongeth, here shall the grantee, and he that granteth not, haue and possesse such chattell personall in common. And in such case where diuers persons haue chattels realls or personalls in common, and by diuers titles, if one of them die, the other that suruiueth shall not haue his fellows parte by the suruiuour but the executors of him that dieth shall hold and occupie it with him that suruiueth, in like forme as their testatour did, or ought in his life, forasmuch as their titles and rightes were seuerall. Also in the case aforesaid, if two haue an estate in common for terme of yeares, and the one doeth

occupie all and put the other out of his possession and occupation, then shall he that is put out haue against the other a writ de Eiectione firmæ for the halfe. In semblable manner where two hold the ward of landes or tenements during the nonage of a child, if one shal put out the other of his possession, he that is out shall haue a writ de Eiectione custodiæ of the halfe, because these things be chattels reals and may be apportioned and seuered. But no action of trespas lieth for one against the other (as for example. Quare clausum fregit & herbam suam conculcauit & consumsit, nor such like actions) forasmuch as each of them may enter and occupie in common. But if two be possessed of chattels personals in common by diuers titles, as of an horse, an oxe, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedie, but to take it againe from him that hath done him the wrong, when he may see his time.

A writ de Eiectione firmę.

De Eiectione custodiæ

In like manner of chattles reals, which may not be seuered, as in the case aforesaid, where two be possessors of the wardship of ye body of a childe within age, if one of them shall take the childe out of the possession of the other, the other hath no remedy by any action at the Law, but to take the child out of the others possession, when he seeth his time.

Forme of pleading.

Finally, ye shall vnderstand, that when a man in pleading and declaring his cause, will shew a deede of feoffement made vnto him, or a gift in fee taile, or a lease for terme of life, of any lands or tenemēts, he shal vse his terms in this wise, & say, by force of such feoffment, gift, or lease he was seised &c.

But

But where a man will declare or pleade a lease or grant made vnto him of a chattell reall or personall, then he shall say by force of which he was possessed.

what is this reall quitte.

Of Partitione to be made of Ioyntenants and tenants in common, enacted by two Statutes made the one in Anno 31. H. 8. and the other in 32. H. 8. Chap. 18.

ALL ioyntenants and tenants in common of any estate of inheritance in their own rights or in the right of their wiues, of any landes or hereditaments within this realm of England, Wales, or the marches of the same, shall and may be compelled to make partition betweene them, of the same which they so hold as iointenants or tenants in common, by a writ de partitione facienda, to be deuised in the Chancerie in like manner as coparceners are compelled to doe, and the same writ to be pursued at the common law. And after such partition made, euery of the said iointenants and tenants in common, shall and may haue aide of the other, or their heirs, to the intent to dereigne the warranty parramount, and to recouer for the rate as it is vsed betweene coparceners, after partition made by the order of the common law.

Writ de partitione facienda.

Aide praied

prove.

war. param. &c.

Item in the xxxij. yeare of King Henrie the eight, chapter xxxij. It is further enacted, that al iointenants and tenants in common, which hold iointly or in cōmon for terme of life, yere or yeres, or iointenants or tenants in common, where one or some of them haue an estate for terme of life, or

yeares, with other that haue an eſtate of inheritance or freehold in any landes or other hereditaments, ſhall be compellable by writ of partition to be purſued out of the Chaunceric vpon their caſes, to make ſeuerance and partition of all ſuch lands and hereditaments as they hold ioyntly or in common for terme of life or liues, yere or yeares or where one or ſome of them hold ioyntly or in common for terme of life or yeres with other that haue an eſtate of inheritance of freehold. Prouided that no ſuch partition nor ſeuerance, be hurtfull to any perſon, other then ſuch as be parties vnto the ſaid partition, their executors or aſſigns.

Of Conditions. Chap. 19.

FOraſmuch as euerie eſtate is either pure or conditionall, it were not amiſſe to make ſome declaration of the nature and efficacie of conditions. Wherefore ye ſhall vnderſtand, that of conditions, ſome be actual conditions, and be called expreſſe conditions, or conditions in deed: and other ſome be conditions in law, which be called in latine, conditiones tacitæ ſiue conditiones implicite, becauſe they be ſecretly implied by the law and not expreſſed.

Diuiſion.

Conditions in deed, be ſuch as be knit and annexed by expreſſe words of the feoffement, leaſe or grant, either in writing or without: as for example, if I infeoffe a man of certain lands, reſeruing to me, and to my heires, ſo much rent yearly to be paid at ſuch a feaſt, and for default of payment, that it ſhalbe lawfull for me to reenter, this is a feoffement vpon condition of payment. And

here

here the reentry of ꝑ feoffor for ꝑ not payment of the rent shall dissolue and vtterly defeat the feoffement. Semblable it is of gifts in taile, leases &c. But if the condition be, that for default of payment of the rent, it shall be lawfull for the feoffor to enter againe into the lands, and to hold them till he be contented and satisfied for the rent: this condition not performed doth not dissolue nor vndoe the feoffement, but onely giueth to the feoffor an authoritie to retaine the lands (as it were by way of distresse) till he hath leuied the arerages of the rent. Distresse.

And ye shall well marke and obserue, that conditions be sometime made to be performed on the feoffees behalfe, and sometime one the feoffors behalfe. On the feoffees behalfe, as when I infeoffe you of landes or tenements, vpon condition that you shal doe such an act, as to pay vnto me or mine heires such an annual rent. On the feoffors behalfe, as when I make a feoffement vnto you vpon condition, that if I pay or cause to be paied vnto you before such a day, such a sum of money, then it shal be lawfull for me to enter againe and retaine my landes in my former estate: In this case he that is the feoffee, is called tenant in morgage, which is as much to say, as dead gage, and it seemeth that the cause why it is so called, is forasmuch as it is doubtfull whether the feoffor will pay at the day limitted and prescribed such a sum of money for the redemption of his lands, or not: for if he doe not, his title or interest in the lands thus gaged or oppignorate, is vtterly extinct and gone, without all hope of renewing. Tenants in morgage

Ye shall also note, that if the morgager dieth be-

fore the day of payment, his heire may redéeme the land verie well, euen as well as his ancestor that mortgaged the land might haue don, although there be no mention made of heirs in the writing.

Also if when the mony is lawfully by the mortgager or his heire tendered and proffered, and the lessor refuseth to receiue the same, the feoffor or his heire may enter, and then hath the feoffée no remedie for his money at the common law. Ye shall vnderstand also, that some conditions be vtterly void in the law, and of none efficasie, vertue, or strength. As if a feoffement be made of landes in fée simple vpon condition that the feoffée shall not alien or put away the same to none other, this condition I say is void, because the feoffée is restrained of his whole power that the law giueth in such case vnto him, and which power and libertie is in a manner included in euery feoffement: yet I may abridge him of part of his power, as to condition with him, that he shall not alien the lands to such a person or such. But of gifts in taile otherwise it is: for if I giue lands to a man and to the heires of his bodie lawfully begotten, vpon condition that he nor his heires shall alien the lands to none other person, this condition is good and effectuall in the Law, and if he or his heires contrarie to the condition doe alien them, then the giuer or his heires may very well enter and retaine the landes for euer, because this condition shall stand with the forenamed Statute of Westminster the second, which prohibiteth such alienations to be made.

Conditions voide.

Gift in taile vpon conditions.

Hitherunto haue I spoken of Conditions in deede, now will I shew what be Conditions in law

law that be annexed to any estates.

Estates vpon conditions in law.

Know ye therefore, that if the office of a Parker, Steward, Constable, Bedell, or Bailife, or such like office, be granted to a man for terme of his life, though there be no condition at all mentioned in the grant, yet the law speaketh of a condition in this case, which is, that if the partie to whome such office is giuen, shall not execute all poyntes appertaining vnto his office accordingly by himselfe, or his lawfull deputie, it shall be lawfull for the grantor, to enter and discharge him of his office, and this condition is called a condition in law.

Conditions against the law.

There be also three other manner of Estates vpon condition, that is to say, conditions against the law, conditions repugnant, and conditions impossible. First, estats vpon conditions against the law be, as if a man make a feoffement, gift, grant, or lease vpon condition, that if the feoffors donors, grantors, or lessors, kill I. S. which is not the Kings Enemie, or burne his house, that then it shall be lawfull to the feoffees, donees, &c. to reenter, this condition is void, and the estate good.

And like Law is, if such conditions be to be performed of the part of the feoffee, grantee, &c.

But if it be, that a lease for terme of yeares be made of land vpon condition, that if the lessee kill I. S. that then he shall haue fee simple, although that he in this case performe the condition, his estate is nothing thereby inlarged, because the condition is against the law.

Obligation

And ye shall vnderstand, that where an Obligation is indorsed with a Condition which is against

against the law, both the obligation and also the condition be clearely void in the law.

Conditions repugnant.

Estates vpon conditions repugnant be, as if a feoffement, or a gift in taile, be made vpon condition that the feoffee or donee shal take no profit, or shall doe no waste and such other like, such conditions be voide, and the state good and effectuall in the law notwithstanding.

Also if a lease be made for terme of life, vpon condition that he shall not doe fealtie, that is as a void condition.

Likewise it is, if a man that hath nothing in the manour of sale, granteth a rent charge going out of the same, vpon condition, that the person shall not be charged, this grant is good, and the condition is void.

Conditions impossible.

Estates vpon conditions impossible be, as if a feoffement be made vpon condition, that if the feoffee goeth not through the sea on foote to Calais in one day, then it shall be lawfull to the feoffor to reenter, this is a frustrate and void condition, and yet the estate is good.

Like law is of a lease made for terme of years, &c. or an obligation with a condition impossible vt supra, the obligation or lease is good, and the condition void to all purposes.

An act how Strangers shall take aduantage of Conditions made, Anno 32. H. 8. Chap. 20.

IT is enacted, that as well persons which haue or shall haue any gift or grant of the King by his letters patents, of any lands, parsonages, titles,

titles, or other hereditaments, or any reuersion of the same which did belong to any monastery or other Ecclesiasticall house dissolued or otherwise come into the kings hands since the fourth day of Februarie in the xxviij. yeare of our Soueraigne Lord king Henry the eight, or which at any time heretofore did belong to any other person, and after come into the kings hands, as also other persons being graunters or assignes to the king or to any other person, their heires, executors, successors, and assignes, shall haue like aduantage against the farmours, and their executors, administrators, and assignes, by entry for nonpaiment of the rent, or for doing waste or other forfeiture, and also shall haue the same aduantage by action onely, of not performing of other conditions, couenants or agreements contained in the indentures of their leases or grants against the said farmors, and grantees, their executors, administrators, and assignes, as the said lessors or grantors themselues might haue had at any time. And againe mutually and on the other side, the said farmors and grantees for terme of yeares, life, or liues, their executors, administrators, and assignes, shal haue like aduantage against them for any condition, couenant and agreement contained in the said indenture, as they might haue had against their said lessors and grantors, their heirs successors, all benefits and aduantages of recoueries in value, by reason of any warranty of deede, or in law by voucher or otherwise onely except.

Prouided that this Act shall not extend to charge any person for breach of any couenant or condition comprised in any such writing, but for such

such as shall be broken and not performed after the first day of September in the 32. yeare of this King and not before.

Liuery of seisin, and Attornement. Chapter 21.

IN all Feoffements, gifts in taile, leases for terme of anothers life, of lands or tenements, there can be no alteration or transmutation of possession by the auncient lawes of this Realme, vnlesse there be a certaine ceremonie adhibited and solemnised in the presence and sight of neighbours or others, which ceremonie is called liuery of seisin.

The maner of liuerie of seisin.

And ye shall vnderstand, that this ceremonie of liuery of seisin is done, when the feoffor, donor, lessor, or their deputie com: with the neighbours solemnely to the lands or tenements, and they put the feoffee, donee or lessee, in possession of the said landes or tenementes, by deliuering vnto him a clod of earth, or the ring of the doore, or some other thing in the name of seisin, and for this selfe cause this ceremonie of law is called liuerie of seisin, that is to say, a tradition or giuing of seisin.

Diuersitie betweene possession and seisin.

But this ceremonie is not required in leases, for terme of yeers, or in leases at will, forasmuch as the lessour in such lease remaineth still seised, and the lessee onely hath possession without any liuery of seisin: and therefore the termes of the law be, that such a man is possessed, whereas in feoffements, gifts in taile, and leases for life, he is called seised.

Wherefore if a Feoffement or lease for life be made

made of lands or tenements, and before that the liuerie of seisin be made, the Feoffor dyeth, the heire of the Feoffor shall haue the lands per summum ius, that is to say, by the rigour of the Law, notwithstanding that the Feoffee haue payd to the Feoffor the price of the land, and although the Feoffee be in possession. But otherwise it is of a lease for the terme of yeares.

Atturnement.

A like ceremonie is vsed when rent charge, rent seruice, rent in grosse, a villaine in grosse, common in grosse, common for beasts, certaine estouers, and such other things as passe by way of graunt, be graunted, for it is no full end perfect graunt till it bee consignat and sealed as it were with the ceremonie of atturnement. This atturnement is nothing else, but when the tenant of the land of which a rent granted is granted, or out of which a rent is granted, doth make some euident signification and token that he accepteth the person to whome the grant is made, to be in the same respect vnto him that the grantor was. As for an example, if the tenant of the land, after he haue heard of the grant, commeth to the grantee, that is to weet, to the person to whome the graunt was made, and say in this wise or in like effect.

How atturnement shall be made.

I agree vnto the grant made vnto you by such a man, or I am well apaid and contented of the grant that such a man hath made vnto you. But the most vsuall frequent forme of atturnement is, to say, Syr, I attorne vnto you by force of the said grant, or I become your tenant, or to deliuer vnto the grantee a penie, or a halfe penie by way of atturnement.

It

If a man maketh first one graunt to one person, and after another to another person, that grant shall stand to which the tenant will atturne although it be to the latter grant.

And ye shall note, that if a man be seised of a manour, which is parcell in demeane, and parcell in seruice, and doth alien the same manour to another, vnlesse the tenant of the manour do aturne, the seruice shall not passe, onely tenants at will excepted, for it needeth not to cause them to atturne.

Diuersitie.

Note furthermore, there is great difference betweene giuing a penie in name of seisin, and giuing by way of atturnement, for when it is giuen by the tenant to the grantee in the name of seisin, it doth not only imply an atturnement, but also it giueth him such a seisin, that if the rent afterward were behind and not paied, he may now vpon the seisin of the penie after a lawfull distres taken, and after rescous made, bring an assise of nouell disseisin, whereas if it were giuen onely by way of atturnement he could not bring the assise, but his writ of rescous onely, if rescous were made.

Assise.

Writ of rescous.

Also ye shall vnderstand, that where lands be deuisable by Testament by the custome of any ancient Borough or citie, if the reuersion of any lands be by testament bequeathed to a man in fee, and the testator, which we call the deuisor, dieth, the deuisee, that is to weet, he to whom the deuise was made, hath forthwith the reuersion in him without further ceremony of atturnement. Likewise it is if a man by testament doth bequeath a rent charge that he is seised of, or a rent seruice, there needeth none atturnement at all.

Atturnement.

If

If two ioyntenants be of land, and the Lord graunteth the seruices to another, if one of the ioyntenants atturneth, it is enough.

Finally, if a lease be made for terme of life, the remainder to another in taile, the remainder ouer to the right heire of the tenant for terme of life, in this case if the tenant for terme of life, will grant his remainder in fee to another by his deed this remainder passeth forthwith without ante atturnement, for if any atturnement were requisite, it should be made of the tenant for terme of life, which in this case is the grauntour himselfe. And in vaine it is that the grantor should be inforced to atturne, sith an atturnement is ordeined and had to none other purpose thē to haue the consent and agreement of the particular tenant, to the intent that it may appeare, that he hath notice and knowledge of this grant: but here where the particular tenant himselfe is the grantor, an atturnement were superfluous, and more then needed. Not requisite.

Note furthermore, that where there is Lord and tenant, and the tenant leaseth his tenements to a woman for life, the remainder ouer in fee, the woman taketh a husband, and after the Lord granteth the seruices &c. to the husband, in this case during the couerture, the seruices be but in suspence. But if the wife die, liuing the husband, the husband and his heires shall haue the rent of them in the remainder, &c. And in this case there needeth no atturnement by word, because the husband that ought to atturne, accepteth the grant of the seruices, the which acceptance is an atturnement in the law. Suspence.

Of

Of Seruice. Chap. 12.

HItherunto haue I briefly touched and ouerrun the sundry kindes and formes of estates. Now forasmuch as there is no tenure, but hath vnto it some seruice knit and annexed, it were very necessary to declare how many kinds of seruices there be, and what seruice is due to euery tenure. For the knowledge hereof, ye shall vnderstand that the principall and most common kinde of seruice that the tenaunt oweth to his Lord, is called Knights seruice.

Knights seruice. Chap. 13.

KNights seruice includeth homage, fealty, and for the most part escuage, and whosoeuer holdeth his lands by Knights seruice, is bound by the law of this realme to do vnto his Lord homage and fealtie, and to pay for the most part escuage, when it shalbe assessed by authority of parliament, as hereafore more plainly shalbe declared.

Homage. Homage is the most humble and reuerent seruice that a man of free estate and condition can doe, for when the tenant shall doe homage to his Lord, the Lord shall sit, and the tenant then shall knæle downe before him vpon both knees, holding his hands betweene his Lords hands, and say in this wise: I become your man from this day forward, of life, and of member, and earthly honor, and to you shall be faithfull and true, and faith to you shal beare for the lands that I claime to hold of you: sauing the faith that I beare vnto our soueraigne Lord the King, and then the Lord so sitting.

How the tenant shall doe homage.

ſitting ſhall kiſſe him. But if an Eccleſiaſticall perſon, which by his order and profeſſion hath addicted himſelfe to the ſeruice of God in eſpeciall, ſhall doe homage to his Lord, he ſhall ſay, I doe to you homage, and ſhall be to you faithfull and true, and faith to you ſhall beare for the tenements that I hold of you, ſauing the faith which I owe to our ſoueraigne Lord the King. What a religious perſon ſhal ſay when he doeth homage.

Alſo when a woman not maried, doth homage to her Lord, ſhe ſhall not ſay, I become your woman, for it is not conuenient that a woman ſhall be the woman of any other then of her huſband that ſhe ſhall marrie, but ſhall ſay euen as the Eccleſiaſticall perſon ſaith, I doe vnto you homage, &c. And if perchance a man holdeth ſundry lands and tenements of ſundry Lords, and euery of them by Knights ſeruice, then in the end of his homage making, he ſhall ſay, ſauing the faith that I owe to our ſoueraigne Lord the King, and to mine other Lords. And none is bound to do homage to the Lord, vnles it be ſuch tenant as hath in the tenancie an eſtate of fee ſimple, or fee taile, either in his owne right, or in the right of an other. For if a woman haue landes and tenements in fee ſimple, or fee taile, which ſhe holdeth of her Lord by knights ſeruice, and taketh an huſband, and hath iſſue, in this caſe the huſband in the life of his wife, ſhall doe homage, becauſe he hath title to haue the lands by the curteſie of England, if he ouerliueth her, and alſo he holdeth them now in his wiues right: yet before iſſue had betweene them, the homage ſhall be made in both their names. But if the woman dieth before any homage made in her life, and the huſband What a woman ſhall ſay. What tenant ſhall homage.

kéepeth ſtill the landes as tenant by the curteſie, now he ſhall not do homage to his Lord, becauſe he hath now an eſtate but for terme of life.

Fealtie. Fealtie, is as much to ſay, as fidelitie, or faithfullneſſe, in doing wher of the tenaunt ſhall hold his hand vpon a Booke, and ſay thus. Heare you this my Lord: I to you ſhall be faithfull and true, and faith to you ſhall beare for the landes and tenements, which I claime to hold of you, and duely ſhall doe to you the cuſtomes and ſeruices which I owe to do to you at the termes aſſigned as me helpe God. And then he ſhall kiſſe the Booke. But he ſhall not kneele as he that doeth homage, nor doe ſuch humble or reuerent ſeruice as is before declared in homage.

How a tenant ſhall doe fealtie

Diuerſitie betweene homage and fealtie. And ye ſhall obſerue, that homage cannot be done but to the Lord himſelfe, whereas the Steward of the Lords court, or the bailife may take fealtie for the Lord.

Alſo tenant for terme of life ſhall doe fealtie, but homage as I ſaid he cannot doe.

Now as concerning Eſcuage, that is to ſay, the ſeruice of the ſhield, ye ſhall vnderſtand, that he that holdeth his landes by Eſcuage, when the King maketh a voiage royall into Scotland for the ſubduing of the Scots, is bound to be with the Kings Mageſtie by the ſpace of fortie dayes well and conuenientlie arrayed and appointed for the warre. And he that holdeth his land by the mottie of the fee of Knights ſeruice, is bound by the force of his tenure to be with the King by the ſpace of twentie dayes, and ſo proportionably according to the rate and quantitie of his tenure.

But now to our institute and purpose, after this voyage Royall into Scotland, in which the King goeth in person, and after his returne into England againe, a Parliament is wont to bee summoned, in which shall be prescribed and assessed what euery person that held his land by homage, and went not with the King, neither by himselfe nor by his deputie, shall pay to the Lord in satisfaction of his not seruing: and according to the taxation hereof, euery tenant shall pay to his imediate Lord, whether it be to the King or other, after the rate and portion of his tenure: if he holdeth by a whole fee, he shall pay the whole escuage, if by a moitie the halfe, if by the fourth part of a fee, the fourth part, &c. And this money thus assessed is called scutage, or escuage, for which the Lord to whome it is due, may very well for the non payment thereof distraine. What here is to be noted, that some tenants by custome bled time out of minde, are bound to pay but the moitie, or the third part of that, which shall be assessed and limited by act of parliament.

Parliament.

Distresse of escuage.

Yea, and the custome is in some place, that to what summe of money soeuer Escuage is assessed the tenaunts shall pay neuer but such a certaine summe of money: and this kind of Escuage, is called Escuage certaine, that is to say, where Escuage is assessed be the Parliament, to a more or lesse summe, the tenaunt to pay to the Lord fiue shillings, and no more nor no lesse, &c. such a tenure is called Socage tenure, and not knights seruice, whereas the other is called Escuage uncertaine.

Escuage certaine.

Escuage vncertaine.

Finally ye shall vnderstand, that escuage vncertaine is alwayes adiudged to be knights seruice, and draweth vnto it, ward, mariage, and relife: but escuage certaine is not knights seruice, but is of the tenure of socage, as shall be hereafter more amply shewed.

Of Ward, Mariage, and Reliefe. Chap. 24.

EVerie knights seruice draweth vnto it, ward Mariage, and Reliefe: wherefore it is now right expedient somwhat to entreat of them.

Ward.

Ye shall therefore be admonished, that when the tenant which holdeth his landes by Knights seruice dyeth, his heire male being at that time within the age of 21. yeares, the Lord shall haue the ward, that is to say, the custodie or keeping of the landes so holden of him, to his owne vse and profit, till the heire commeth to the full age of 21. yeares. For the Law here presumeth that till he come to his age, he is not able to doe such seruice, as is of this tenure required.

Mariage.

Furthermore, if such heire be vnmaried at the time of the death of the tenant, then the Lord shall haue also the ward, and the bestowing of the mariage of him.

The full age of a woman 14.

But if a tenant by knights seruice dyeth, his heire female being of the age of fourteene yeares or aboue, then the Lord shall haue the warde neither of the Land, nor yet of the body of such an heire: And the reason hereof is, because a woman of that age, may haue a husband able to doe

doe knights ſeruice, that is to ſay, to wait vpon the Kings Maieſties perſon, when he goeth into Scotland with his armie royall.

But if ſuch an heire female be within age of 14. yeares, and not married at the time of the death of her auncеſtor, then the Lord ſhall haue the ward of the land holden of him, till ſuch heire female commeth to the age of 16. yeares, by force of an act of Parliament in the ſtatute of Weſtminſter 1. cap. 12.

Diuerſitie of age.

Note, that there is a great diuerſitie in the law, betweene the ages of females and of males, for the female hath theſe many ages appointed by the Law. Firſt, at 7 yeeres of age the Lord her father may diſtraine his tenants for aide to marrie her. Secondly, at 9. yeeres of age ſhee is dowable. Thirdly, at 12. yeeres ſhee is able to aſſent to Matrimonie. Fourthly, at 14. yeeres ſhee is able to haue her land, and ſhall be out of ward, if ſhe be of this age at the death of her auncеſtor. Fiftly, at 16. yeeres ſhe ſhall be out of ward, though at the death of her auncеſtor ſhe was within the age of 14. yeeres. Sixtly, at 21. yeeres ſhee is able to make alienations of her landes or tenements: Whereas the man hath but two ages, the one at 14. yeeres, to haue his lands holden in Socage, and to aſſent to Matrimonie, the other at 20. to make alienations.

Age of a woman.

The age of a man.

Yee ſhall vnderſtand, that by the Statute of Merton, 6. Chap. it is enacted, That if in caſe the Lords doe marrie their wards to villaines or others (whereby is diſparagement) if ſuch heires ſo married be within the age of 14.

peeres, or such age that the said ward cannot consent to the marriage, then if the friends of this heire complaine, and feele themselues grieued with this vnmete marriage, the next of kinne to the heire, vnto whom the heritage cannot descend, may enter into the lands, and put out the Lord, which is gardeine in chiualrie: and if the next kinsman will not thus doe, another kinsman of the infant may doe it, and shall take the issues and profits to the behoofe and vse of the heire, and shall yeild accompt thereof vnto him, when he commeth to his full age.

Next of kin to the heire.

Accompt giuing.

Diuers disparagemẽts

And there be diuers other disparagements, which be not expressed in the said statute: as if the heire being within age of consent, & in ward, be married to a decrepit person, or cripple, as to one that hath but one foote, or one hand, or that is a deformed creature, or hauing any horrible disease or continuall infirmitie: All these and such like be disparagements.

But here also ye shall vnderstand, that it shall be said no disparagement, vnlesse the heire be so married when he is within age of discretion, that is to say, within the age of 14. peeres. For if he be of that age, or aboue, and assenteth to such marriage, it is no disparagement, neither shal the Lord for such marriage lose his ward, because it shalbe reputed & assigned to the folly of the heire, being of age of discretion, to consent to such marriage.

Now if the Lord then being a gardeine, offer to the heire being his ward, a conuenient marriage without disparagement, and the heire refuseth it, as he may at his choise and election very well doe, then the Lord shall haue the value of

Value of marriage.

the

the marriage of such heire, when he commeth to his full age. But yet if he marrie himselfe being so in ward, against the will of his gardeine, then he shall pay the double value, by force of the Statute of Merton before remembred.

Double value of marriage.

And ye shal note, that if lands holden by knights service descend to an infant or child within age, from his mother, or from any of his auncestors, his father being yet alive, in this case the Lord shall not haue the marriage of his heire: for during the life of his father, the sonne shall be ward to no man.

One shall not be ward liuing his father.

Finally, it is to be knowen, that he which is gardein in chiualry in right, may before he hath seised the ward, graunt the same either by deed or without deed to another man, & then he to whom such a graunt is made, is called gardein in fait.

Gardein à droit. Gardein à fait.

Now as touching Reliefe, ye shall know, that if a man holdeth his land by knights service, and dieth, his heire being of full age (the full age of the male is 21. yeeres, of the female 14.) then the Lord of whom the land is holden, shal haue of the heire relefe.

Note yee, that all Earles, Barons, or other the Kings tenants (holding of him in chiefe by knights service) which die, their heire being of full age at the time of their deaths, that is to say, 21. yeeres of age, they ought to pay the olde reliefe for their inheritance: that is, the heire or heires of an Earle, for an whole Earledome, 100. li. The heire or heires of a Baron for an whole Baronie, 100. Markes. The heire or heires of a Knight, 100. shillings, and he that hath lesse, shall giue lesse, according to the olde

cuſtome of fees. Like law is obſerued of all o-thers that hold of any other Lords immediately, vt ſupra.

Alſo a man may hold lands of a Lord by two knights fees, and then the heire being of full age at the death of his anceſtor, ſhall pay to his Lord for reliefe x. pounds.

Seruice of Caſtle garde. Chap. 25.

YE ſhall vnderſtand, that a man may hold by knights ſeruice, and yet not hold by elcuage, nor ſhall pay any elcuage, for he may hold by Caſtle garde, that is to ſay, by ſeruice to keepe a tower of his Lords caſtle, or ſome other place, vpon a reaſonable warning, when his Lord heareth that enemies will come, or be alreadie come into England.

Ground in the Law. This ſeruice is alſo knights ſeruice, & draweth to it, Ward, Marriage, and Reliefe, as in all caſes the common knights ſeruice doth.

Of graund Sergeantie. Chap. 26.

THere is alſo another kind of knights ſeruice, which is called graund Sergeantie, that is, where a man holdeth his lands or tenements of the King, by ſuch ſeruice as he ought in proper perſon to doe, as to beare the Banner of our Soueraigne Lord the King, or his Speare, or to conduct his Hoſt, or to be his Marſhall, or to be the Sewer, Caruer, or Butler, at the feaſt of the Coronation, or to be one of his Chamberlains of the receipt of his Eſchequer, or to doe like ſeruice to

to the King in proper person, such manner of ser-
uice I say is called graund Sergeantie, that is
to say, a great or high seruice: and the cause why
it is so called, is because it is the most honourable
and most worthie seruice that is: for he that hol-
deth by escuage, is not appointed by his tenure,
to do any other more speciall seruice then another
is bound that holdeth by escuage: but he that hol-
deth by graund sergeantie, is bound to doe some
speciall seruice to the king.

The most high seruice.

Also, if he that holdeth of the king by graund
sergeantie dieth, his heire being of full age, then
the heire shall pay to the king for reliefe, not onely
C. s. as he that holdeth by escuage shall doe, but
moreouer the cleere perely value of those lands
and tenements which he holdeth of the king by
graund sergeantie.

Reliefe of the tenant by graund sergeantie.

Furthermore we shall obserue, that in the Mar-
ches of Scotland, some men hold of the king by
coinage, that is to say, blowing of a horne, to the
intent to warne the men of the country, when
they heare that the Scots or other their enemies
be comming, or be already entred into England,
which seruice is also a kind of graund sergeantie.

Tenure by Cornage.

Graund sergeantie therefore is as much to say in
Latine, as Magnum seruitium, that is to say, a
great or high seruice. Like as petie sergeantie is
called Paruum seruitium, that is to say, a little or
small seruice.

Definition of Sergeantie.

But to reuert againe to the matter, we shall
note, that if any tenant holdeth of any other lord
then of the king by such seruice of coinage, then it
is no graund sergeantie, but yet nevertheless, it
is knights seruice, and draweth to ward, mar-
riage,

Rule in the Law.

riage and reliefe, for this is a rule infallible, that none can hold by graund Sergeantie, but of the Kings Maiestie onely.

Finally, ye shall vnderstand, that all they which hold of the king by this seruice called graund sergeantie, doe hold of the king by knights seruice, and by vertue of this tenure the king shall haue of them ward, mariage, and reliefe: but escuage yet he shall not haue of them, vnlesse they hold by escuage of him by expresse speciall words.

Petie Sergeantie. Chap. 27.

Petite sergeantie is socage in effect.

TEnant by Petite Sergeantie, is he that holdeth his land immediatly of our Soueraigne Lord the King by the maner of seruice, to pay to the King yeerely, either a Bow, a Speare, a Dagger, a paire of Gauntlets, a paire of Spurs of Gold, a Shaft, or such other small things appertaining to the warre: and this seruice is in effect but socage, because that such a tenant is not bound by his tenure to goe, ne do any thing in his owne proper person, touching the warre, but only to render and pay yeerely certaine things to the King, as a man ought to pay rent. Wherfore this seruice of petite sergeantie is no knights seruice. But yet ye shall note, that a man cannot hold eyther by Petie sergeantie, neither by Graund sergeantie, but of the King only.

Homage auncestrel. Chap. 28.

TEnant by Homage auncestrel, is he which holdeth his land of his Lord by homage, and both

both he and his ancestors, whose heire he is, haue holden the same land of the said Lord, and of his auncestors, time out of mind by homage, and haue done vnto them homage, and this is called homage auncestrel, by reason of the long continuance: which hath bene by title of prescription, aswell concerning the tenancie in the blond of the tenant, as concerning the Lordship in the Lord. And this seruice of homage auncestrel draweth vnto it warrantie: that is to say, if the Lord which is now in life, hath once receiued the homage of his tenant, he ought to warrant the same tenant, what time soeuer he shall be impleaded or sued, for such lands so holden of him by homage auncestrel. Warrantie because of homage auncestrel.

Moreouer, such seruice of homage auncestrel draweth vnto it acquitall, that is to say, the Lord ought to acquite the tenant against other Lords that can demaund any manner of seruice of the tenancie. Acquitall.

Wherfore if in this case the tenant which holdeth by homage auncestrel, be impleaded of his lands, and auoucheth or calleth the Lord to warrantie, who commeth in by Processe, and demandeth of the tenant what he hath to bind him to the warranty, and the tenant sheweth how he and his ancestors, whose heire he is, haue holden his lands of him and of his ancestors time out of minde: surely the Lord, if he cannot deny this, and if he hath receiued the homage of such a tenant, is bound by the law to warrant him his land: so that if the tenant lose his lands in default of the Lord thus auouthed, that is to say, called to warrantie, he shall recouer against him as much in

value

vaine of thoſe lands & tenements which the Lord had at the time of calling to warrantie, or at any time after. But if the Lord neuer receiued the homage of his tenant, then he may very well, when he is thus vouched, diſclaime in the Lordſhip or ſeignioꝛie, and ſo put out the tenant of his warrantie. Wherefore ye ſhall note, that in euery caſe where the Lord diſclaimeth in his ſeignioꝛie in Court of Recoꝛd, his ſeignioꝛie or Lordſhip is extinct, and the tenant ſhall hold from thenceforth of the next Lord to him that thus diſclaimeth.

Thus ye perceiue, that homage auncеſtrel is not, but whereas is a long continuance, as well in the bloud of the tenant, in reſpect of his tenancie, as in the bloud of the Lord in reſpect of his ſeignoꝛie. Wherefore if the tenant doth once alien his lands to another, although he purchaſe the ſame againe, yet he ſhall not hold any longer by homage auncеſtrel, becauſe of his diſcontinuance, but ſhall hold it now by the vulgar and accuſtomed homage.

Of Liueries. Chap. 29.

Tenant in chiefe of the king.

When one dieth which held of the king by knights ſeruice in Capite, that is to ſay, in chiefe, his heire being within age, the king (as before is declared) ſhall haue the wardſhip and cuſtodie, as well of the lands as of the bodie, that is to wit, the marriage, if he be vnmarried. But if the heire be of full age at the time of the death of ſuch auncеſtoꝛ, yet ſhall the king by his pꝛerogatiue ꝛoyall haue pꝛimer ſeiſin of all the lands, tenements, and other hereditaments,

Primer ſeiſin.

ditaments, whereof such his tenant was seised in his demeane as of fee. And if such an heire will enter into his lands when he commeth to his full age, before hee sue his liuerie and receiue seisin by the King, no freehold shall accrew nor grow vnto him, but he shall be deemed an intruder into the kings possession: yea, and if he die so seised in the meane time, his wife shall haue no dower of such land: wherefore it behoueth in any wise, that such heire aswell male as female, comming to full age, before he or she enter into their land, to sue liuerie. The maner and forme whereof according to the act of Parliament lately promulgated and set forth, I intend briefly to recite. Intruder vpon the kings possession.

How heires ought to sue their Liueries enacted 33. H. 8. cap. 21. Chap. 30.

NO person or persons hauing lands or tenements aboue the yearely value of 5. l. shall haue any liuerie before inquisition or office found before the Escheator or other Commissioner, by vertue of the Kings writ of Diem clausit extremum, or Commission directed out of the Chancery or other Courts, hauing authoritie to make such a writ or commission, which shall not passe out of the same but by warrãt or bil assigned, and subscribed by the Master of wards or liueries, the Surneyor, Atturney, and Receiuer of the said Court, or three, two, or one of them, to be directed and deliuered to the Chancelor of England, or to any other Chancelor or officer hauing power

£ 5. value an Inquisition

Writ Diem clausit extremum.

power to award such writs, and for the writing and sealing of the same, shall be paid the accustomed fees. But if the landes exceede not the said yearely value of v. l. they shall pay for the seales of every such writ or Commission viij. s. and for the writing vj. s. and not aboue.

And the Inquisitions and offices hereupon found, shall be returned by the said Escheators, or Commissioners, into the same Court from whence the writ or Commission was awarded: which done, the Clarkes of the petie Bagge shall receiue the same offices, and make a transcript thereof to the Master of the Wards and Liueries. And then the said Master and the Surueyor, Atturney and generall Receiuor, or three of them, whereof the Master or Surueyor to be one, shall couenant and indent with such persons for their Liueries of the Calels, Manours, Lordships, Lands, Tenements, and Hereditaments, comprised or not comprised in such offices, and shall make and set a rate and price of the same, and appoint the dayes of payment thereof, by Obligation to be taken for the same to the King.

And euery bill, for any speciall or generall Liuerie assigned, by the hands of the said Maister, Surueyour, Atturney, Receiuour, or three of them, whereof the Master or Surueyour to be one, shalbe warrant sufficient to the Lord Chancelor, or other officer, hauing power to passe Liueries vnder any of the Kings seales accordingly. In which case the Clarks of the petie bagge, or other Clerks, by whom the Liueries be written, shall receiue aswell for themselues, as for other,

other, such fées as haue béene accustomed.

Item euery person may sue at his pleasure a generall Liuerie for any Manours, Lands, Tenements, Rents, Reuersions, Remainders, or other Hereditaments, whereof the cleare yearely value shall not excéede twenty pound. Prouided that an office be thereof found, and a warrant first obtained of the said Master and others, as is aforesaid. Generall liuerie.

And where such generall Liuerie is sued, if the landes excéede the yearely value of v. l. they shall pay for the seale xx. s. iiij. d. and all other fées accustomed, as afterward shall be declared. But if they excéede not the yearely value of v. l. they shall pay but these fées following: that is to say, for the seale of the Liuerie xij. d. To the clarks of the petie pagge for the writing, and the inrolling xx. d. For the respect of the homage in the Hanaper viij. d. To the Lord great Chamberlaine xx. d. To the Master of the Rolles xx. d. And the Clarke of the Liueries for the warrant and inrolling of the Liueries xx. d.

Item no person or persons shall pay in the Exchequer, or any other Courts for the respect of homage, for any lands or hereditaments, not excéeding the yearely value of v. l. aboue viij. d. And for the entring thereof, and warrant of Atturney, aboue iiij. d. Respect of homage

And the value of such Landes and Hereditaments not excéeding the yearely value of xx. l. shall bee taken as it is limited in the offices founden thereof, except by the examinations and certificate of the said Master, Surueyour, Atturney and Receiuor, or thrée of them, it shall otherwise

otherwise appeare and be declared in any of the Kings Courts.

Also no Escheatour shall sit only by vertue of his office, for enquirie of the tenure, title or value of any lands or other hereditaments holden of the king being of the yearely value of v. l. or aboue, without the Kings writ to him directed, vpon paine to forfait v. l. for euery time hee shall so doe. Neither shall he take for the finding of any office of lands not exceeding the yearely value of v. l. aboue xv. s. that is to say, vj. s. viij. d. for his owne fee, and vj. s. viij. d. for the writing of the office. And for the charges of the Jury ij. s. And for the officers that shall receiue the offices in any Court of record ij. s. vpon paine that the Escheator doing otherwise, shall for euery time forfeit v. l. And vpon like paine the officers of euery Court of Record where such inquisitions shall be returned, being offered vnto them within one moneth next after the finding thereof, shall receiue them. The one moitie of all which forfeitures to the King, and the other to the party that will sue for the same, &c.

Paine of forfait.

Fees of office.

And they which hereafter shall be in case to sue Liuery, whose lands and tenements exceede not the yearely value of v. l. may lawfully sue forth that generall Liuery by warrant from the said Courts, as is aforesaid, although none other inquisition be thereof had nor certified, paying nevertheless the fees aboue remembred.

Finally, euery person shall sue forth his patent for his Liuerie, within three moneths next after the assignement of his bill, or else his bill assigned to be void and of none effect.

Hereafter

Heereafter ensueth the fees accustomed of the generall Liueries.

FIrst to the Clerkes of the petie bagge, for the respect of homage and fealtie, the writing and inrolling xviij s. iij d. to the Lord great Chamberlaine xl s. To the Master of the Rolles iij. l. To the Clarkes of the Liueries for writing of the Indentures and Obligations xx. s. beside counsell.

The fées of the speciall Liuerie accustomed to be payd, bée these following, that is to say, for the Signet iij. l. x. s. For the priuie seale xxx s. For the great seale xliij. s. viij d. To the Clarkes of the petie bagge xl. s. To the Master of the Liueries Clarke xl. s. For inrolment of the knowledge of the Indenture xij s. To the Lord great Chamberlaine of England xl. s. For the writ of the allowance for the same Liuerie x. s. vj d.

And note ye, that sometime in especiall cases the fées be more, and sometime lesse, as the case and matter doth require.

Hitherto haue we briefely touched all kinds of knights seruice, and things incident to the same. Now will we with like briefenes declare the other kinds of seruices which commonly be comprised vnder the generall name of Socage. For all lands or tenements, either they be holden by knights seruice, or else by socage tenure, or at least by the nature of socage tenure, which in effect is all one. Wherefore first we shal define what socage is in the proper signification: which done, we shall perule the other kinds of seruice which be of the nature of socage tenure.

Chap. 31.

What socage tenure is.

SOcage is properly where the tenant is bound to come with his yoke, that is, with his plowe to eare and sowe a parcel of the demean lands of his Lord, which service in auncient time was very common, but now by the mutuall consent, both of the Lord and the tenant, it is converted for the most part into a pearely rent. Howbeit the name of Socage abideth still. Wherefore now, all that is not knights service, is called by the name of Socage. So that if a man holdeth by fealtie onely, or by fealtie and homage for all maner of service, it is but Socage tenure, for homage alone maketh not knights service. Also if a man holdeth by Eienage certaine, as I have said heretofore, he holdeth in effect but by socage.

Gardeine in socage.

Now where as a man holdeth his landes by Socage and dyeth, his heire being within the age of fourteene yeares, the Lord shall not have the Ward, but the next of kinne to the heire, to whom the heritage cannot descend, shall have the the title and Wardshippe, as well of the land, as of the heire, till the heire come to the age of fourteene yeares. And such tutor or gardeine is called gardeine in socage, and shall render accounts to the heire, of the issues and profits that he hath received of the landes during such time, deducting his reasonable costes and expences: so that he shall not have the Wardshippe to his owne use and profite, as the Lord which is gardeine in chiualry hath.

And in case the gardeine in Socage dyeth before he hath made his accompt, the heire is with

out remedie, because no writ of account lieth against the executors but for the King onely.

Finally, ye shall understand, that when tenant in Socage dyeth, the Lord of whom the land is held shall haue reliefe, that is to say, the value of the rent that is yearely due vnto him of the tenancy, beside the yearely rent, so that in effect after the death of his tenant, he shall haue of the heire two rents, saue that for the reliefe he may distraine forthwith, but for the accustomed rent he cannot distraine till the vsuall day of payment be come.

Rents. two rents.

Distresse

Franke almoigne. Chapter 32.

The first foundation of franke almoigne.

TEnant in Franke almoigne that is to say in free Almes, is where a Bishop, Deane, or any other Ecclesiasticall person holdeth of his Lord in pure and perpetuall Almes, and such tenure began first in old time after this manner. When a man was seised in auncient time of certaine landes and tenements in his Demesne, as of fee, and of the same tenements infeoffed an Abbot and his Couent, or a Prior and his Couent, or any other person Ecclesiasticall, as a Deane of a Colledge, Master of an Hospitall, or such like, to haue and to hold the same lands to them and to their successors for euer, in pure and perpetuall Almes, or in Franke almes, in these two cases the tenements shall be holden in Franke almoigne.

By force of which tenure, they that hold in Franke almoigne after this sort, bee bound of

right before God, to make orisons and prayers, and to doe other divine services for the soules of their grantors and fessors, and for the soules of their heirs which be dead, and for the prosperous estate of them and their heires, whilst they be alive. And because of right they be bound to this divine service, they be discharged by the law to doe any other prophane or corporall service, as fealtie, or such other like.

Tenant in franke almoigne shall doe no fealtie.

But nevertheless, if such as hold their tenements in frank almoigne, doe omit and leave undone these Divine services whereunto they be bound before God, the lord cannot distrain them nor compell them by any other meanes by the course of the common law: but the onely remedy is to complaine of them to their Ordinary, who of right ought to compell such Ecclesiastical persons to doe the divine service due as aforesaid.

Tenant by divine service.

But here ye shall note, that if a Parson of a Church or any other Ecclesiasticall person, did before the statutes of dissolution of Abbeis, Monasteries, &c. hold of the Lord by certaine divine service to be done, as to sing masse every fryday in the weeke, or Placebo and Dirige, or to finde a priest to sing masse, or to distribute in almes C s. to a hundred men at such a day, in all these cases if such divine service be undone, the Lord may very well distraine, because the service is put here in certaine.

Distresse for divine service.

Now as I said before, if in olde time a man did enfeoffe such Ecclesiasticall persons after such sort, he should hold his lands in Franke almoigne. But at this day it is otherwise: for by the reason of the statute called, Quia emptores terrarum

terrarum, Westm. 3. cap. 1. No man can alien ne graunt lands or tenements in fee simple, to hold of himselfe, so that now if a man being seised of lands in fee simple, graunteth the same by licence to an Ecclesiasticall person in franke almoigne, these words franke almoigne be void, and the Ecclesiasticall person shall hold them immediately of the Lord of the feoffor by the same services that the feoffor held, so that no man can hold in franke almoigne, but by force of a graunt made before the said Statute, only the K. Maiesty excepted, for he is out of the compasse of the Statute.

Finally, ye shall note, that whereas a man holdeth in frank almoigne, his Lord is bound by the law to acquite him of all manner of service that any other Lord can haue or demand out of the said lands, so that if he doth not acquite him, but suffer him to be distrained, then he shall haue against his Lord a certaine writ, called a writ of Meine, and shall recouer against him his damages and costs of his suit. Writ of Meine.

Of Burgage. Chap. 33.

A Tenure in Burgage, is where an auncient borough is, of which the King is Lord, & they which haue tenements within the same borough, hold the same of the king, paying a certaine yerely rent, which tenure in effect is but socage tenure. Likewise it is, whereas any other Lord, spirituall or temporall, is Lord of such borough. Socage tenure.

Here ye shall note, that for the most part such auncient Boroughes and Townes haue diuers Customes and Vsages, which other Townes Custome.

haue not. For some Boroughes haue a custome, that the youngest sonne shall inherite before the eldest, which custome is called commonly Borough English.

Dower by custome.

Also in some Borough by the custome, the woman shall haue for her dowrie all the lands and tenements whereof her husband was seised at any time during the matrimonie and coverture.

Deuise by custome of Borough.

Moreover, in some Boroughs a man may bequeath or deuise his lands or tenements by testament at the time of his death, and by force of such deuise or legacie, he to whom the bequest is made after the death of the testator which made such testament, may by force of this auncient custome enter into the lands so to him bequeathed or deuised, without any liuerie of seisin to him made, or further ceremonie of law.

Howbeit, how and in what manner a man may at this day deuise his lands by his last will and testament, by force of a certaine new Statute, it shall be hereafter declared.

Diuers other customes in England there be, contrary to the course of the common law, which if they be any thing probable, and may stand with reason, are good and effectuall, notwithstanding they be against the common law.

And note, that no custome is allowable, but such custome as hath ben vsed by title of prescription, or time out of mind.

Of Villenage, or bond seruice.

Chap. 34.

A Tenant in Villenage, is properly, when a Villaine, that is to say, a Bondman holdeth of

of his Lord, whoſe bondman he is, certaine lands or tenements, according to the cuſtome of the manor, or otherwiſe at the will of his Lord, and to doe his Lord villaine ſeruice, as for to beare and carrie the dung of his Lords out of the Citie, or out of his Lords manor, and to lay it vpon the demeſne lands of the Lord, or to do ſuch like ſeruice and villaines ſeruice. Howbeit, freemen in ſome places hold their tenements and landes of their Lords by cuſtome, by ſuch ſort of ſeruice, & their tenure is called tenure in villenage, and yet they themſelues be no villaines, ne of ſeruile condition, but freemen. For the land holden in villenage maketh not the tenant a villaine, but contrariwiſe, a villaine may make free land to be villaine land vnto his Lord. As if a villaine purchaſeth land in fee ſimple, or fee tayle, the Lord of the villaine may enter into the land ſo purchaſed by the bondman, and put him and his heires out for euer: and this done, the Lord, if he will, may leaſe the ſame land to his villaine, to hold of him in villenage.

Free men may hold by villenage.

And here ye ſhall vnderſtand, that ſeruitude or villenage is the ordinance, not of the Law of nature, but of the Law, which is called Ius gentium, by which a man is made ſubiect contrarie to nature, vnto another mans dominion. For he that is a villaine or bondman, either he is ſo by title of preſcription, that is to ſay, he and his anneſtors haue beene villaines time out of mind, or elſe he is a villaine by his owne confeſſion in ſome Court of Record: ſo that all villaines, either they be borne villaines, or elſe they be made ſo. They be

villenage by confeſſion in Court of Record.

borne villaines, when their father being a bondman himselfe, begetteth them in lawfull wedlock, either of a free woman, or of a bond woman, for so that the father be bond, the issue of him lawfully begotten, must nedes be bond by the Lawes of England, having no regard to the condition of the mother, whereas in the ciuill law of the Romans it is cleane contrary: for there, partus sequitur ventrem, that is to say, the seruitude or bondage of the mother maketh the child bond, and not the bondage of the father. Howbeit, the bastard sonne of a bondman shal not be bond, and the reason is, because a bastard is Nullius filius in the law, that is to say, no mans sonne.

Partus sequitur patrem.

Bastard.

They be made bondmen or villains two waies, either by their owne proper act, as when a free person being of full age, wil come into a Court of Record, and there confesseth himselfe bond to an other man.

Or else by the Lawes of Armes called Ius gentium, as when a man is take prisoner in warres, and is compelled to serue and become the thrall and bondman of him that toke him, the Law calleth such a person a villaine, that is to say, a slaue and thrall.

Diuision of Villanes.

And ye shall note, that villaines be properly called in Latine Serui, because that when they be taken in warre, the Captaines be wont not to kill them but to sell them, & so to saue their liues, so that they be called Seruia seruiendo, that is to say, of seruing. They be called Mancipia a manu capiendo, because they be taken by hand & power of their enemies.

Now

Now as I said, by the law of Nature we are borne free, but after that by the law of Gentiles, seruitude or bondage did presse and inuade the world, then ensued the benefit of Manumission. Manumission is, quasi de manu emissio, that is to say, a giuing out of the hand or power. For so long as a man is in bondage and seruitude, he is subiect to the hand and power of another, and when he is manumised, he is made free, and deliuered from the said power: so that a manumission is to say, a writting testifying that the Lord hath infranchised his villaine, and all his offspring and sequell. Manumission.

Also if the Lord maketh to his bondman an obligation of a certaine summe of money, or granteth to him by his deed an annuitie or yerely pension, or leaseth to him by deed lands or tenements for terme of yeres, any of these acts doe imply an infranchisement. What acts maketh Manumission in law.

Likewise, if the Lord maketh a feoffement to his villaine, and maketh vnto him liuerie of seisin, this also is an infranchisement and secret Manumission. Briefly to speake, whersoeuer the Lord compelleth his villaine by the course of the Law to doe that thing that he might otherwise inforce him to doe, or to suffer, without the authority and compulsion of the law, he doth by implication infranchise his villaine: as if the Lord will bring against his villaine an action of Debt, an action of Account, of Couenant, or of Trespas, these and such like be in the eye of the law infranchisements & manumissions, because that the Lord in all these cases may haue the effect and purpose of his suit, that Causes of infranchisement.

that is to say, the goods, cattels, and correction of his bondman, without the compulsion of the law, euen by his owne proper power and authoritie which he hath vpon his villaine. But if the Lord doth sue his villaine by an appeale of felonie, the villaine being lawfully indicted of the same before, this is no tacite manumission or infranchisement, for the Lord though he haue power to beat his villaine, and to spoyle him of his goods, yet he cannot by the Law of this Realme put him to death.

Ye shall also vnderstand, that if a mans bondman purchase lands, or acquire and get vnto him any other thing, the Lord may forthwith enter and seise the same into his owne hands. Wherefore if the Lord will bring against his villaine a Præcipe quod reddat, by which he demaundeth against his villaine any lands or tenements, this implyeth an infranchisement, forasmuch as he bindeth himselfe to the prescript and authoritie of the law, whereas he might vse his own authority by entring and seising the said lands.

Finally, ye shall marke, that some villaines be called villaines in grosse, and other some be called villaines regardant. In grosse be they of which the Lord is seuerally seised, and not by reason of any Lordship or manor, but they be called regardant, which doe belong to a manor of which the Lord is seised, and the said villaines haue bin regardant, that is to say, expectant and attendant, time out of mind, to the Lord of the said manor, in doing vnto him such seruices as to a villaine appertaineth.

Of

Of auncient demeſne. Chap. 35.

There is alſo a certaine kind of tenure, which is called auncient demeſne, and thoſe tenants which hold by this ſeruice, be freeholders, and by charter, and no: by copie of Court Roll, or by the Verge, after the cuſtome of the manor, at the will of the Lord. And theſe tenants be ſuch as hold of thoſe manors which were S. Edwards the king or which were in the hands of K. William the Conqueror, and theſe manors be called the ancient demeſnes of the king, or the ancient demeſnes of the Crowne of England. And to ſuch tenants which hold of ſuch manors, be many and diuers liberties giuen and graunted by the law, as to be quit of toll and paſſage, and ſuch like impoſitions, which be demaunded of men for their goods and cattels, ſold or bought in faires and markets by them: alſo to be quit and free of tare and tallage graunted by Parliament, except that the Kinge Maieſty do tare auncient demeſne, as to him only appertaineth when he thinketh god for great and vrgent conſiderations. Tenants alſo of auncient demeſne ought to be quit of payments to the expences and charges of the knights which come to the Parliament, alſo they ought not to be impanelled nor put in Iuries and Enquests in the countrey, out of their manors or ſeignorie of auncient demeſne, for the lands which they hold of ſuch manor, vnleſſe they haue other lands at the common law, for which they ought to be charged. And if ſuch tenants, or any of them which hold of the manor of ancient demeſne, be diſtrained to doe

vnto their Lord other seruices or customes then they or their auncestors haue vsed to doe, then may they sue a certaine writ called a Monstrauerunt, directed to the Lord, commaunding him that he distraine them not for to doe other seruice or customes then they haue been accustomed to doe.

Writ of Monstrauerunt.

And for further knowledge hereof, ye shall vnderstand, that in the Exchequer there is a Booke called Domesday, which Booke was made in the time of the said S. Edward. And all the lands that were in the seisin, and in the hands of the said S. Edward at the time of the making of the said Booke be auncient demesne.

Frank fee.

But the lands which then were in other mens hands, though they be written in the said booke, be franke fee, and no auncient demesne.

Finally, it is to be noted, that tenants of ancient demesne shall not be impleaded for their said lands out of the manor whereof they so hold, and if they be, they may shew the matter and abate the writ. But if they once answere to the writ, and iudgement giuen, then the lands haue lost the nature & benefit of ancient demesne, and are become franke fee, that is to say, pleadable at the common Law for euermore. And thus haue we spoken of the diuersitie of Tenures.

Abatement of a Writ.

Of Rents. Chap. 36.

FOrasmuch as vpon euery Tenure there is commonly reserued one rent or other, therefore I thinke it good somewhat to treate of Rents. But yee must vnderstand, that there be

sundry

sundry sorts of rents. There is one kinde of rent which is called rent service. Another which is called Charge, and the third which is named in French, Rent secke, that is to say in Latine, Reddit⁹ siccus a dry rent. Now rent service is so called, because it is knit to the tenure, and is as it were a service whereby a man holdeth his Landes or Tenementes, or at the least way when the rents be vnseuerably coupled and knit with the service: as for an example, where the tenant holdeth his Land of the King, or of any other Lord by fealtie and by certaine rent, or by homage, fealtie, and by certaine rent, or by any other sorts of services and by certaine rent, this rent is called rent service. And here ye shall note, that if this rent service be at any time when it ought to be payed, behind and vnpayed, the Lord of whome the land or tenement is so holden, whether it be in fee simple, fee taile, or for terme of life for yeares, or at will, may of common right enter and distrain for the rent, though their be no mention at all, ne clause of distresse put in the deede or lease. I said before that the nature of this rent service is to be coupled and knit to the tenure. For where no tenure is, there can be no Rent service. And therefore if at this day I be seised of landes of fee simple, and make a deede of feoffement of the same to an other in fee simple, reserving by the same deede a rent, this can be called no Rent service, because there can be now no tenure betweene the Feoffour and the Feoffee. Otherwise it is of feoffements in fee simple made before the Statute of Westminster the third, Cap. primo, called Quia emptores terrarum.

Diuision of rent service

rent service vnseuerably coupled.

Distresse of common right

For

For before the making of that Statute, if a man had made a feoffement in fee simple, reseruing to him a certaine rent, yea though it had been without deede, there had been begun and created a new tenure betweene the feoffor and the feoffee, and the feoffee should haue holden of the feoffor, who by vertue of the same might of common right haue distrained for such rent. But at this day by force of the said act there can be no such holding or tenure created or began, and consequently, no rent seruice can be at this day reserued vpon any gift in fee simple, except it be in the kings case, who being chiefe lord of all, euer might and may, giue lands to be holden of him. Thus ye see, that at this day, no subiect can reserue any rent seruice vnto him, vnlesse the reuersion of the lands or tenements that he shall graunt, be still to him, as where he graunteth them in fee taile, or maketh but a lease for terme of life, or for certaine yeares, or else at will.

For in all these cases the reuersion of the fee simple remaineth still in him, and therefore if here be any rent reserued, it is to be called a rent seruice, and is of common right restrainable, though there be no clause of distresse in the deed of feoffement or lease.

But here ye will aske me, when in the case before remembred, a man at this day giueth cleane away the land or tenement from himselfe in fee simple, so that there is no maner of reuersion of the same remaining in him at all, and yet neuertheless reserueth vnto him by his deed a certaine rent, what maner of rent shall this be called: I answere, if there be in the deede inuented any

clause

clause of distresse, that is, that if the rent be behind vnpayed, it shall be lawfull for the feoffor to enter, and to distraine, it is called a rent charge, for as much as the land is charged therewith, but hauer of common right no, but onely by vertue and force of the writing. But on the other side, if there be no such clause of distresse put in the Indenture, then the rent so reserued shall be called a rent secke.

Charge.

Likewise, if a man that is seised of certaine lands, will grant either by indenture, or by deede Poll, that is to say, single and not indented, a yearely rent out of the same landes to an other, whether it be in fee simple, fee taile, for terme of life, for yeares, or at will, with clause of distresse, then this rent is called a rent charge, and he to whom such rent is graunted, may for default of payment therof enter and distraine. But contrarie, if the graunt be made without any such clause of distresse, it is called a rent seck, that is to say a drie rent, because he cannot come to it, in case it be denyed by way of distresse, in so much that if he were neuer seised of it, he is by the course of the common law without remedie. Otherwise it is of a rent charge, for heere he to whom the graunt is made when the rent is behind, may chuse whether he will sue a writ of Annuity against the grantor, or distraine for the rent behind, and retaine the distresse, till the time he be payed accordingly. But he cannot haue both remedies together, but must take him to the one, for if he once recouer by a writ of Annuity, then is the land discharged. And if he sue not his writ of annuity but distraine for the arrerages, and the tenant

Annuitie.

sueth

sueth a repleuin, whereupon the other auoweth the taking of the distresse in court of record, then is land charged, and the person of the grauntour discharged of the action of Annuitie.

Estopple.

Ye shall also vnderstand, that if a man wil that an other shall haue a rent charge comming out of his land, and yet will not that his person shall be by any meanes charged by writ of Annuitie, hee may then haue such clause in the end of his deede. Prouiso quod præsens scriptum, nec quicquam in eo contentum vllo pacto se extendat ad ouerand personam meam, per breue sed actionem de annuitate, sed tantummodo valeat ad onerandum terras, fundos, & tenementa mea, de annuo redditu prædicto. If this or such like clause be added, then the land is charged, and the person of the grantor is discharged.

Prouiso.

for a land charge & not the person.

Also if a man will make a deed of grant in this wise, that if John at Stile be not yearly paied at the feast of Christmas for terme of his life xx. s. sterling, that then it shall be lawfull for the said John at Stile, to distraine for it in the manor of Dale, this is a good rent charge, because the manor is charged with the rent by way of distresse, and yet neuerthelesse in this case ye person of him that made such deede is discharged of an action of annuity, forasmuch as he granted not by his deed any annuity to the said John at Stile, but onely granted that he might distraine for yearely rent.

Furthermore, ye shall note, that if a man hath a rent charge to him and to his heires comming out of certaine landes, and doth purchase any parcell of these lands, to him and to his heires, in this case the whole rent charge is quenched and gone

gone, and the annuitie alſo, the cauſe is this, that a rent charge cannot be in ſuch caſe appoꝛcioned. Otherwiſe it is of a rent ſeruice, as foꝛ example, if one which hath a rent ſeruice of xx. ſ. by yeare, doth purchaſe parcell of the land, out of which this yearely rent of xx. ſ. is comming, this ſhall not extinguiſh oꝛ dꝛowne the whole rent, but foꝛ the parcell onely. Foꝛ rent ſeruice in ſuch a caſe may very well be appoꝛcioned and rated accoꝛding to the value of the land. Yet there be ſome ſoꝛts of rent ſeruices, which in no wiſe can bee appoꝛcioned. As where a tenant holdeth his land of his Lord by the ſeruice, to render to the Lord yearely at ſuch a feaſt, an hoꝛſe lading of gold, a red hoꝛſe, a gylliuer, oꝛ ſuch like, if in this caſe the Lord doth purchaſe parcell of the land thus of him holden, this ſeruice is gone, becauſe ſuch ſeruice cannot be ſeuered and appoꝛcioned. Alſo eſcuage is a ſeruice that may be very well appoꝛcioned, accoꝛding to the difference and rate of the land.

Extinguiſhment of a rent charge.

Rent ſeruice cannot be apportioned.

But where any land is holden by homage and fealtie, if the Lord purchaſe parcell of the Land, yet he ſhall haue his homage and fealtie ſtill of his tenant.

We ſhall marke alſo, that if a man maketh a leaſe of lands to another foꝛ terme of life, reſeruing to him certaine rent, if in this caſe he granteth that rent to John at Stile, ſauing to himſelfe the reuerſion of the ſaid land, this rent is but rent ſecke, becauſe John at Stile that hath the rent, hath nothing in reuerſion of the land.

But if he granteth the reuerſion of the land to

John at Noke for terme of life, and the tenant attorneth accordingly, then hath John at Noke the rent as rent service, because he hath the reuersion for terme of his life.

Rent is incident to a reuersion.

Likewise it is, if a man giueth landes or tenements in taile, reseruing to him and to his heires certaine rent, or maketh a lease of the land for terme of life, reseruing certaine rent, if he graunteth the reuersion to another, and the tenant attorneth accordingly, the whole rent and seruice shall passe by this word Reuersion, because the rent and seruice in such case be incident to the reuersion and do passe by the grant of the reuersion. But if he had granted the rent onely, it had beene a rent secke.

What remedie a man hath to recouer his Rent when it is behind. Chap. 37.

I Shewed you before, that for a rent seruice if it be behind, ye may distraine in the ground, euen of common right, though there be no such clause of distresse mentioned in the deede of feoffment, grant or lease.

Also for a rent charge ye may distrain, or bring your writ of annuitie, at your choice and election, as before is declared. But of a rent secke if ye were neuer seised of it, nor of any parcell thereof, ye be without remedie by course of the common law, for ye cannot distraine for it, nor yet bring your writ of annuitie: but if ye were once seised of it, or of parcel thereof, and it is eftsoones behind then

then your remedie shall be this, ye must goe eyther by your seike, or by your deputie to the land or tenement out of which the rent is comming, and there demand the arerages of the rent, which if the tenant deny to pay, this deniall is disseisin of the rent. Also if the tenant be not then readie to pay it, this counteruaileth a deniall, which is a disseisin. Disseisin of rent seeke

Moreouer, if neither the tenant nor no other man be remaining vpon the ground to pay the rent when ye demand the arerages, this also is a deniall in the law, and is in deed a disseisin. And for these disseisins ye may haue an assise of Nouel disseisin against the tenant, and shall recouer seisin of the rent, and the arerages and your damages and costs of your writ, and of your plea And if after such recouerie and execution had, the rent be againe at an other time denied you, then ye may haue a writ of Redisseisin, and shall recouer your double damages, &c. Assise. In redisseisin double damages.

It shalbe therefore wisdome for a man when a rent is granted by any person vnto him, to take of the tenant of the land a penie or an halfe penie in name of seisin of the rent, and then if at the next day of payment the rent be denied him, he may haue an assise of Nouel disseisin. And ye shal note, that their be three causes of disseisin of rent seruice, that is to wit, rescous, repleuin, and inclosure. Rescous is, when the Lord vpon the land holden of him distraineth for the rent behind, and the distresse be rescued from him, or if the Lord come vpon the land to distraine, and the tenant or any other man for him will not suffer him that is called Rescous. Three causes of disseisin of rent seruice.

Repleuin.

Repleuin is, when the Lord hath distrained and repleuin is made of the distresse by writ, or by plaint.

Enclosure.

Enclosure is, where landes or tenements be so inclosed, that the Lord cannot come within the landes or tenements for to distraine.

And the chiefe cause why such things so made be disseisin to the Lord, is forasmuch as the Lord is by this way disturbed of the meane and remedie whereby he ought to come and have his rent that is to wit, by distresse.

Foure causes of disseisin of rent charge.

And two of rent secke.

And there be foure cases of disseisin of rent charge, that is to wit, rescous, repleuin, enclosure, and denier. For denier, or deniall, is as well a disseisin of a rent charge, as it is of rent secke. Finally, ye shal understand, that ther be two causes of disseisin of rent secke, that is, denial, and inclosure.

And it seemeth that there is yet another cause of disseisin of all the three rents aforesaid, that is to wit, this: when the Lord commeth to the land holden of him, or when he that hath a rent charge or a rent secke, commeth to the land to distraine for the rent behind, or to demand the rent, and the tenant hearing this, incountreth him, and forestalleth him the way with force and armes, and manaceth him in such sort, as he dare not come to the ground for to distraine for his rent behinde for feare of death or mutilation of his members. This is a disseisin, because the partie is disturbed of his meane, and lawfull remedie whereby he ought to come to his rent.

Finally, ye shall observe and make, that by an act of parliament made in the 22. yere of our Soveraigne Lord K. Henrie the eight, it is lawfull for

for the executors and administrators of tenants in fee simple, tenants in fee taile, tenants for terme of life, of rent seruices, rent charge, rent seeks, and of fee farmes, for arrerages of such rents as were due vnto their testators in their liues, eyther to distraine for the same, or at their election to bring an action of Debt, except in such Lordships in Wales, or in the Marches thereof, whereas the tenants haue vsed time out of minde to pay vnto euery Lord at his first entry into the Lordship any summe of mony, for the redemption of all manner of onteries and penalties incurred at any time before the Lords entrie. Distresse, or action of debt.

Also by force of the said act, the husband which was seised in the right of his wife, may after the death of his wife either distraine, or bring an action of debt for the arrerages of such rents as were due and vnpayed in her life.

Likewise it is of him that hath a rent for terme of another mans life: if he for terme of whose life he hath the rent, dyeth, yet by vertue of the said Act, he or his executors and administrators, may either distraine or bring an action of Debt for the arrerages due before the death of him, for terme of whose life he had the rent.

How auowries ought to be made of Rents and Seruices, enacted An. 21. H. 8. Chap. 38.

WHere any lands be holden of any person by Rents, Customes, or Seruices, if the Lord distrayne vpon the same lands for any such Rents, Customes, or Seruices, and Replevin thereof be sued, the Lord may

auowe, or his baylife or seruant may make conisance, or iustifie the taking vpon the same landes, as within his fee and seignorie, alledging in the said auowrie, conisance, or iustification, the same lands to be holden of him, without naming any person certaine to be tenant of the same, and without making any auowry, iustification, or conisance vpon any person certaine. And likewise vpon euery writ sued of the second deliuerance. And they that make any such auowrie, iustification, or conisance, if the same auowrie, conisance, or iustification be found for them, or the plaintife be nonsuite, or otherwise barred, then they shall recouer their whole damages and costs.

Also the said plaintikes and defendants shall haue like pleas, and one aide prier (pleas of disclaimer onely except) as they might haue had before the making of this act.

Pleas in auowrie.

Also such persons as by the common law may come to the plaintife or defendant in the said writs of Replegiare or second deliuerance, as well without Proces as by Proces, shall from henceforth also in this case come vnto them, as well without Proces as by Proces, and haue like pleas & like aduantages in all things (disclaimer only except) as they might haue by the common law before this act.

An act for the assurance of farmors, made An. 32. H. 8. Chap. 39.

ALl Leases hereafter to be made of any lands or other hereditaments, by writing indented vnder seale, for terme of yeeres, or for terme of

of life, by any persons being of the age of 21. yeres having any estate of inheritance, either in fee simple, or in fee tayle, in their owne right, or in ꝑ right of their Churches, or wives, or iointly with their wives, shall be good & effectuall against the lessors, their wives, heires, and successors, according to the estate comprised in such Indenture of lease.

Prouided, that this act shall neither extend to any leases to be made of any lands, or hereditaments, being in the hands of the farmors, by vertue of any old lease, vnlesse the same old lease be expired, surrendred, or ended, within one yere after ꝑ making of the new lease, nor yet to any grant to be made of the reuersion of any lands or hereditaments, or to any lease of such lands or hereditaments, as haue not commonly bin letten to farme by the space of 20. yeres next before such lease thereof made, nor to any lease to be made without impeachment of wast, nor to any lease to be made aboue the number of 21. yeres, or three liues at the most from the day of the making thereof. And that vpō such lease be reserued yerely during the same, due and payable to the lessors, their heires & successors, to whom the land should haue come after the death of the successors, and to whom the reuersion therof shal pertaine, according to their estates and interests, so much yerely rent or more, as hath beene accustomably yelded for the same, within 20. yeres next before such leases, and that he to whom the reuersion thereof shal appertaine, after the death of such lessors, or their heires, shall haue such like remedy and aduantage against their farmors thereof, their executors and assignes, as the lessor himselfe should haue had.

The wife shalbe party to the lease.

Prouided also, that the wife be made partie to euery such lease as shall be made by her husband of any lands, being the inheritance of the wife, and that euery such lease be made by Indenture in the name of the husband and his wife, and shee to seale thereunto. And that the rent be reserued to the husband and wife, and to the heires of the wife according to her state of inheritance therein. And that the husband shall in no wise alien, discharge, graunt, or giue away the same rent reserued, nor any part thereof, longer then during the couerture, without it be by fine leuied by the said husband and wife.

Prouided furthermore, that this act extend not to giue libertie or power to any persons to take any moe farmes, leases, or taking of any lands, or other hereditaments, then they might haue done before the making of this act: nor yet extend to giue any libertie to any Parson or Vicar of any Church or Vicarage, for to make any lease or graunt of any of their messuages, landes, tenements, tithes, profits, or hereditaments, belonging to their Churches or Vicarages, otherwise then they might haue done before the making hereof. Anno 32. H. 8.

What grant by a Corporation is good.

It is furthermore enacted, that the graunt, lease, or gift, or election of the Gouernor or Ruler of any Hospital, Colledge, Deanrie, or other Corporation, with the assent of the more part of such of the same as haue voice thereunto, shall be good and effectuall, any Rule or Statute made by any Founder to the contrarie notwithstanding.

Of

Of falsifying of the recoueries by Farmors, enacted An. 21. H. 8. Chap. 40.

ALl Farmors or Lessees for terme of yeeres may falsifie for their terme onely recoueries had by fained titles, as well as tenant in free hold. And the same farmors, their executors and assignes, shal enioy their said termes, according to their leases, against such recoueries, euen as if none such had beene suffered. In which case, neuertheleſſe the recouerer, after such recouerie had, shall haue like remedie against the farmors, by anowrie, or action of debt, for rents and seruices reserued vpon the same leases, being due afore the same recoueries, and like actions for wast done after the same recoueries, as the lessour might haue had, if no such recouerie had beene had. Furthermore, no Statute Staple, Statute Marchant, nor execution by Elegit, shall be auoided by any such fained recouerie, but like remedie shall be had to auoid and falsifie the said recouerie, as is ordained for the farmor or lesse for terme of yeeres.

Auowrie or action of debt.

Of Tythes, and how they shall be recouered, enacted An. 32. H. 8. Chap. 41.

ALl persons shall truly pay their Tithes and Offrings, according to the lawful customes and vsages of Parishes and places where such Tythes or Duties be due. And if they doe wilfully withhold any parcell of them, the party, whether

whether he be Ecclesiasticall, or lay, that should haue them, may conuent such persons before the Ordinarie, his Commissarie, or other competent minister or Iudge of the place where such wrong shalbe done, according to the Ecclesiasticall lawes. And in euery such case or suit, the same Ordinary or Iudge hauing the parties or their procurator before him, shal proceed to the determination therof ordinarily or summarily, according to the course of the said Lawes, and therevpon shall giue sentence according.

And in case any of the parties of any matter concerning that suit do appeale from the sentence and definitiue iudgement of the said Iudge, then the same Iudge forthwith, vpō appellation made, shall adiudge to the other party the reasonable costs of his suit, and shall compell the same party appellant to pay the same by compulsarie processe and censure of the said lawes, taking surety of the other party to whom such costs shal be adiudged, to restore the same to the appellant, if afterward the principall cause of that suit of appeale shall be adiudged against him. And so euery Iudge Ecclesiasticall shal iudge costs to the other party vpon euery appeale to be made in any suit or cause of subtraction or detention of any tythes or offering, or in any other suit to be made concerning duties of tythes or offerings.

Vpō an appeale costs adiudged By an Ecclesiasticall Iudge.

And if any persons, after such sentence giuen against them, shall obstinately refuse to pay their tythes or duties, or such summes of money so adiudged wherein they be condemned, then two Iustices of the Peace of the same Shire, whereof one

one to be of the Quorum, shall vpon certificate or complaint to them made in writing by the Judge that gaue the sentence, cause them to be attached and committed to the next gaole, there to remaine without bayle or mainprise, till they shall haue found sufficient sureties to be bound by recognisance, or otherwise, before the same Justices, to the Kings vse, for the performance of the said judgement.

if they refuse the certifie to 2 Justices. one of the J. & committ:

Prouided, that no person shall be sued or otherwise compelled to pay any tythes for any lands, tenements, or hereditaments, which by the lawes of this Realme are discharged, or not chargeable with the payment of any such tythes.

Also this act shall in no wise bind the inhabitants of London, and suburbs of the same, to pay their tythes and offerings within the same Citie and suburbs, otherwise then they should haue done before.

Furthermore, if any hauing an inheritance, freehold, terme or interest, in any Parsonage, Vicarage, Portion, Pension, Tythes, Oblations, or other Ecclesiasticall profit, made or to be made temporall, or admitted to be in temporall hands by the Laws or Statutes of this Realme, be disseised or otherwise put from the same, or any other person clayming to haue interest therein, the person so disseised, or wrongfully put from his said right or possession, his heire, wife, and other to whom such wrong shall be done, may haue remedie in the Kings temporall Courts, as the case shall require, for the recouerie thereof, by writs originall of Præcipe qđ reddat, assise of Nouel disseisin, Mortdancester, Quod ei deforceat, writs

Ecclesiasticall bi-lings, brought to the same tri-alls as temporall Courts.

of

of Dower, or other writs originall to be graunted in the Chancery, of euery such Parsonage, Vicarage, portion, pension, or other profit Ecclesiastical, according to the nature of the suit thereof. And writs of conenant and other writs for fines to be leuied, and all other assurances to be made of any such Parsonage or profits Ecclesiastical, shall be deuised and granted there, like as hath bin vsed for fines to be leuied, and assurance to be had of lands or other hereditaments, and all iudgements giuen vpon such writs originall graunted for any the premisses, and all fines leuied & knowledged in any of the Kings said Courts thereof, shalbe of like force as iudgement giuen, and fines leuied of lands, tenements, and hereditaments.

Of Mortuaries, enacted An. 21. H. 8. Chap. 42.

NO person spirituall, their farmors or bayliffes, shall call any person before any Iudge Spirituall, for the recouerie of any Mortuaries, more then is hereafter mentioned, vpon paine to forfeit for euery time so much in value as they shall take aboue the summe here limited, and ouer that, 40. s. to the party grieued, for which he shall haue an action of Debt by Writ, Bill, or Information, wherein no Wager of Law, Essoine, nor Protection, shall be allowed.

First, no Mortuary shalbe taken of any which at his death hath in moueable goods vnder the value of ten markes. Also no Mortuarie shall be taken, but onely where Mortuaries haue bene vsed to be payed, and there after the forme hereafter mentioned. Nor in no moe places but one, that

that is to wit, there where his moſt abiding is, and there but one. Nor no perſon ſhall take for the mortuarie of any perſon being at his death, of the value of ten marks above his debts paid, and vnder xxx.l. above iij.ſ. iiij.d. And of the value of xxx.l. and vnder xl. not above vj.ſ. viij.d. And of the value of xl.l. or above, of any ſumme whatſoeuer it be, not above x.ſ.

Alſo no Mortuarie ſhall be aſked nor payd for any woman couert baron, or child, or any perſon not keeping houſe, or for any wayfaring man, but the mortuaries of ſuch wayfaring men be anſwerable in that place where they had their moſt dwelling at the time of their death.

Neuertheleſſe ſuch ſpirituall perſon may take any thing, which ſhall be diſpoſed or bequethed to him, or to the high aulter of the Church.

Alſo nothing ſhall be taken for Mortuarie in Wales, nor in the Marches of the ſame, nor in Calis or Warwick, or the Marches of the ſame, but onely in ſuch places of the ſame, where Mortuaries haue bin accuſtomed to be paid, and ther but onely after the forme above ſpecified. Prouided that the Biſhops of Bangar, Landaffe, S. Dauids, and S. Aſſe, and the Archdeacon of Cheſter, may take ſuch mortuaries of the prieſts within their dioces and iuriſdictions, as heretofore haue bẽn accuſtomed. Prouided alſo, that in ſuch places where Mortuaries haue bẽn accuſtomed to be takẽ of leſſe value, none ſhal be compelled to pay any other mortuarie, or more for any Mortuarie, then hath bẽne accuſtomed, nor no Mortuary there ſhal be demanded of any perſon exempt by this act, vpon paine afore limitted.

Of

Of Discontinuance.

Chap. 43.

IT is called a discontinuance by the lawes of England, where he that hath the possession of landes or tenementes for the time present, and yet not hauing the fee simple in himselfe, nor in his owne right onely, maketh an alienation of the same to another, by reason whereof he that should haue them after him, and which then hath right vnto them, cannot enter, but is driuen to his remedie by way of action, in such wise that the said landes be not vtterly shifted and gone from such person or persons as haue right vnto them, but be all onely discontinued for a time, till the person which after the death of such discontinuer hath right vnto them, doe continue and bring them home againe, not by entrie, but by suit and way of action. As for example, a tenant in tayle of certaine landes, doth enfeoffe an other in the same, in fee simple or fee taile, and hath issue and dieth, his issue cannot enter into the landes though he hath title and right vnto them, but is put to his action which is called a Formedon in the discender. And if such tenant in taile which maketh such a feoffement, hath no issue at time of his death, it is yet nevertheless a discontinuance to him which is either in the reuersion or in the remainder, so that neither the one nor the other can enter but be driuen to their action, he in the reuersion to his Formedon in the reuerter, and he in the remainder to his Formedon in the remainder.

Formedon in the discender.

Formedon in the reuerter or remainder.

In like manner if a Bishop doth alien landes which be parcell of his Bishoprycke and dyeth, this

this is a discontinuance to his successor, forasmuch as he cannot enter, but is driuen to his writt of Entrie sine assensu Capituli.

Entrie sine assensu Capituli. fo. 4 B.

Semblable, if a deane be sole seised of lands in the right of his deanry, and maketh such an alienation, this is a discontinuance to his successeur. Also if the Master of an Hospitall alieneth any lands of his hospitall, that is a discontinuance, and his successor cannot enter, but is put to his writt, De ingressu sine assensu confratrum & sororum.

Ingressu sine assensu confratrum & sororum.

But if a parson, or a vicar of a church, will alien any of his glebe lands to another in fee simple or fee taile, and dyeth, or resigneth his benefice, this is no discontinuance to his successor, but he may very well enter, notwithstanding such alienation made by his predecessors. And the highest writt that a Parson can haue, if his predecessor hath alienes his glebe land, or lost it by default, or reddition, is a Iuris vtrum. And furthermore note that no tenant of the land can by his or their act, discontinue the right of him in the reuersion, vnlesse it be by feoffement with liuerie and seisin, or else by a release with warranty.

And note, that such things as passe by way of grant by deed without liuery and seisin, cannot be discontinued, as an aduowson, common, or a villein in grosse, reuersion, rent charge, common for beasts certaine, and such other like.

Also ye shall vnderstand, that in the 32. yeare of King Henry the 8 it was enacted, that no fine, feoffement, or other act to be made or suffered by the husband onely, of any landes or tenements, being the inheritance or freehold of his wife during

during the couerture betweene them, should be any discontinuance thereof, or be prejudiciall or hurtfull to the said wife, or to her heires, or to such as should haue right, title, or interest to the same by the death of such wife, but that the same wife, and her heires, and such other to whom such right should appertaine after her decease, may then lawfully enter into all such landes and tenements, according to their rights and titles therin

How recoueries by collusion against tenants for terme of life, is no discontinuance, enacted Anno 32. H. 8. Chap. 44.

WHere diuers persons seised of lands and hereditaments, as tenants by the curtesie of England, or otherwise onely for terme of life or liues, haue heretofore suffered other persons by agreement or couine betweene them had, to recouer the same against them in the Kings Court, by reason whereof, they to whom the reuersion or remainder thereof hath belonged, haue after the deaths of such tenaunts been driuen to their actions for the recontinuance and obtaining of the said landes and tenements so recouered, and sometime haue been cleerely disherited of the same: It is enacted, that all such recoueries hereafter to be had by agreement of the partie, or against any such particular tenant of landes, or hereditaments, whereof he is, or hereafter shall be seised, as tenant by the curtesie of England, tenaunt in tayle after possibilitie of issue extinct, or otherwise for terme of life, shall from henceforth as against such persons to whome the reuersion

ner sion or remainder shall then appertaine, and against their heires and successors be clearely void. Provided that this act extend not to any person that shall by good title recouer any hereditaments without fraude or couine against any such particular tenant, by reason of any former right or title, nor yet to auoid any recouery to be had against any such particular tenant by the assent and agreement of those in the reuersion or remainder, so that such assent and agreement do appeare of record in the Kings Court.

How wrongfull disseisin is no descent in the law, enacted Anno 32. H. 8. Chap. 45.

WHere diuers persons haue by strength and without title, entered into lands and tenements, and wrongfully disseised and dispossessed the rightfull owners and possessors therof, and so being seised by disseisin, haue thereof died seised, by reason of which dying seised, the parties that were so disseised and dispossessed, or such other persons as before such descent might haue lawfully entred into the said lands and tenements, be thereby clearely excluded of their entry into the land, and put to their action for their remedy and recouery therof: It is enacted, that the dying seised hereafter of any such disseisour, hauing no right or title therein, shall not be deemed any such descent in the law, as to take away the entry of such persons or the heires, which at the time of the said descent had good title of entry

possession by the disseisor for five yeares.

into the same. Except that such disseisor hath had the peaceable possession of his lands or tenements whereof he shall dye seised, by the space of fiue yeares next after the disseisin by him committed, without entry or continuall claime, by such as haue lawfull title thereunto.

The limitation of Prescription enacted An. 32. H. 8. Chap. 46.

NO person shall sue or maintaine any writ of right, or make any title or claime to any landes, tenements, rents, annuities, commons, pencions, portions, corrodies, or other hereditaments, of the possession of his auncestors, or predecessors, and declare any further seisin or possession of his auncestor or predecessor, but only of the seisin or possession of his auncestor or predecessor, which haue been seised of the same within sixty yeares, next before the teste of the same writ, or next before the said title or claime so to be sued.

Limitation of 60. years

Also, none shall sue or maintaine any Assise of Mordauncestor, colinage, taile, writ of Entrie vpon disseisin, done to any of his auncestors or predecessors, or any other action possessary vpon the possession of any of his auncestors or predecessor, for lands or hereditaments of further seisin or possession of them, but only his seisin or possession which was seised thereof within 50. yeares next before the teste of the originall of the same writ. And none shall maintaine action for lands or other hereditaments vpon his owne seisin or possession therein, aboue 30. yeares next before the teste of the originall of the same writ.

Limitation of 50. years

Limitation of 30. years.

Item

Item, none ſhall make any auowʒy oʒ conſſance foʒ a rent, ſuit, oʒ ſeruice, and alledge any ſeiſin of the ſame in his auowʒy oʒ conſſance in poſſeſſion of his anceſtoʒs oʒ predeceſſoʒs, oʒ in his owne poſſeſſion, oʒ in the poſſeſſion of any other, whoſe eſtate he ſhall claime to haue aboue 50. yeares next 50 yeares Auowry.
beſoʒe the making of the ſaid auowʒie oʒ conſſance. Moʒeouer, all Foʒmedons in reuerture, Foʒmedons in remainder, and Scire facias vpon fines of lands oʒ other hereditaments to be ſued, ſhall be taken foʒ 50. yeares next after the title of action fallen. And if any doe ſue any of the ſaid actions of ʒwits foʒ lands oʒ other hereditaments oʒ make any auowʒie, conſſance, preſcription oʒ claime foʒ any rent, ſuit, ſeruice, oʒ other hereditaments, and if he pʒoue that he oʒ his anceſtoʒs oʒ predeceſſoʒs were in actuall poſſeſſion oʒ ſeiſin therein, at any time within the yeares beſoʒe limitted, if the ſame be trauerſed oʒ denied by the party plaintife, demandant oʒ auowant, oʒ by the party tenant oʒ defendant, he and his heires ſhall from henceforth be vtterly barred foʒ euer, of euery the ſaid ʒwits, actions, auowʒies, conſſance, Barre.
preſcription, title and claime hereafter to be ſued oʒ made foʒ the ſame lands oʒ other the premiſſes foʒ which ſuch action, ʒwit, auowʒie, conſſance, title, oʒ claime hereafter ſhall be ſued oʒ made.

Pʒouided, that all ſuch perſons which now haue any of the ſaid actions, ʒwits, auowʒies, Scire facias, conſſance, preſcription, title oʒ claime depending, oʒ that hereafter ſhall ſue oʒ bʒing any of the ſaid ʒwits, oʒ actions, oʒ make any of the ſaid auowʒies, conſſances, preſcription

Whether eſtate ſhall take effect.

titles, or claime, at any time before the feaſt of the aſcenſion of our Lord, which ſhall be in the yeare of our Lord, 1546. ſhall alledge this ſeiſin of their auncеſtors, or predeceſſors, or their owne poſſeſſion and ſeiſin, and alſo have all other like aduantage in the ſame writs, actions, auowries, conſtances, preſcriptions and claimes, as they might have had before the making of this Statute. Prouided alſo, that if any perſon be now within the age of xxj. yeares, or couert baron, or in priſon, or out of this Realme, now having cauſe to bring any of the ſaid writs, or actions, or to make any auowries, conſtances, preſcriptions or claimes, it ſhall be lawfull to ſuch perſon, to ſue or bring any of the ſaid actions, or to make any of the ſaid auowries, conſtances, titles or claimes, at any time within ſix yeares next after ſuch perſon now being within age, ſhall accompliſh the age of xxj. yeares, or now being couert baron, ſhall be ſole, or now being in priſon, ſhall be at their liberty, or now being out of the Realme, ſhall come and be within this Realme. And that euery ſuch perſon in their ſaid actions, auowries, conſtances, titles or claimes, to be made, ſued, or commenced within the ſaid ſix yeares, ſhall alledge the ſeiſin of their auncеſtors or predeceſſors, or of their owne poſſeſſion, or of the poſſeſſion of thoſe whoſe eſtate they ſhall then claime. And alſo within the ſame ſix yeares ſhall haue like aduantage in the ſame, as they might haue had before the making of this act.

Prouided alſo, that if the ſaid perſons now being within age, or couert baron, in priſon, or

out

out of this Realme, do die within age, or being co-
nert, or in priſon, or out of this realme, doe deceaſe
within 6. yeeres next after they ſhall accompliſh
their full age, or ſhall be at large within this
realme, or ſhall become ſole, and no determination
or iudgement had of ſuch title, actions, or rights,
ſo to them accrewed, then the next heire of ſuch
perſons ſhal enioy like aduantage, to ſue, demand,
auow, declare, or make their ſaid titles, claymes,
or preſcriptions, within ſixe yeeres next after the
death of ſuch perſons, as the ſaid infant after his
full age, or the ſaid woman couert after the death
of her huſband, or the ſaid perſon being out of this
Realme, after his repaire or comming into the
ſame, or the ſaid perſon impriſoned after his en-
largement and comming out of priſon, might haue
had within ſixe yeeres then next enſuing, by force
of the prouiſion laſt before rehearſed.

Prouided alſo, that if any perſons before the ſaid
feaſt of the Aſcention, ſue any of the ſaid actions,
or make any auowry, title, or clayme, and the ſame
happen by the death of any the parties thereun-
to, to be abated before iudgement or determinati-
on thereof had, then the ſaid perſons, being de-
maundants or auowants, or making any ſuch co-
niſance, preſcription, title, or clayme, being then a-
liue: and if not, then their next heires may com-
mence their action, and make the auowrie, coni-
ſance, or claime vpon the ſame matter, within one
yeere next after ſuch ſuite abated, and ſhall haue
like aduantage to ſue, demaund, auow, declare, or
make their ſaid titles, claymes, or preſcriptions,
within the ſaid one yeere, as the demaundants

in such writ or suite abated, or as such as did a-now or make comisance, title, clayme, or pre-scription, might haue enioyed in the former action or suite.

Attaint vpon false verdict.

Prouided furthermore, that if any false verdict hereafter be giuen in any of the said actions, suits, auowries, prescriptions, titles, or claymes, then the party grieued may haue his attaint vpon euery such verdict, & the plaintife in the same attaint vpon iudgement for him giuen, shall haue like re-couerie, execution, and other aduantage, as here-tofore hath bene vsed.

Of Fines. Chap. 47.

FInes haue their name, because they make a finall end & determination of all suites, strifes, and debates betweene men. For the due leuying whereof, it was enacted in the fourth yeere of King Henry the seuenth, that they must be so-lemnly before the Iustices of the common place, read and proclaymed the same Terme, and three Termes next following the ingrossement, at which time all the pleas must cease. And such Fines shall be a sufficient barre and discharge a-gainst all persons, sauing women that be couert baron, if such women be not prime to the same Fine, or such as be within age, in prison, out of the realme, or out of their right minds. But these Fines shall not conclude ne barre all Strangers which haue right to enter or to haue action, if they come within fiue yeres after such Proclamations made, or (in case the cause of action falleth vnto them,

4. H. 7.

them, after the fine so duly leuied) if they come and commence their action and suit within fiue yeeres next after such cause of action to them accrued. And they may sue against the takers of the profits. But if they that haue right thereto, be within age, in prison, couert baron, or out of the realme, or not in their right memory, then their title or entry shalbe saued vnto them till they be full of age, out of prison, discouert & sole, within the realme, or of right mind: and then within fiue yeres after, their action or entry must be sued or made with effect.

Also by the said Statute it shall be a good plea for all strangers, to say, that they that were parties to the fine, nor none other to their vse, had any thing in the tenements or lands at the time of the leuying of the fine.

Furthermore, in the 32. yeere of this King, for the auoiding of certaine doubts and ambiguities, it was enacted, that all fines, as well heretofore leuied, as hereafter to be leuied, according to the said Statute of Henry the seuenth, by any person of the full age of 21. yeres, of any lands or other hereditaments, being before the fine leuied, in any wise tayled vnto him, or any of his auncestors, in possession, reuersion, remainder, or in vse, shall be immediately after the same fine leuied, ingrossed, and proclamation made, a sufficient barre and discharge for euer, aswell against him and his heires, clayming the same onely by force of any such entaple, as against all other to their vse, so that the same fines be not leuied to any woman after the death of her husband, contrarie to the Statute made the 11. yeere of Henry the seuenth,

of lands and tenements of the inheritance or purchase of her husband, or of any of his auncestors given to her in bower, for terme of life, or in tayle, in vse, or in possession. Except also all fines leuied, or to be leuied, of any such lands or hereditaments by the owners thereof, by any speciall Act of Parliament, made sith the said fourth yeere of Henry the seuenth, be restrayned from making any alienations, discontinuances, or other alienations of the same. Also of such lands as be now in suit & variance in any of the Kings Courts, or wherof any euidences be now in demaund in the Chauncerie, or which be alreadie recouered. Except also fines leuied, or to be leuied by any person, of lands or tenements graunted to him, or to his auncestors in tayle, either by the Kings Letters Patents, or by vertue of any Act of Parliament, whereof the reuersion is in the King. And confirmed in the 34. yere of King Henry the eight.

Of Testaments or last Willes. Chap. 48.

Diuision.

TEstamentum in Latine, is as much to say as mentis testatio, that is, a declaration or witnessing of a mans mind. And there be two sorts of Testaments: The one is called Testamentum scriptum, that is, a written Testament, or last will by writing: and the other is called Testamentum nuncupatiuum, a Testament nuncupatiue, which is when a man doth expresse by mouth his last will and Testament without writing, by

Written testament.

The testament Nuncupatiue.

by calling before him certaine of his neighbors, in whose presence he doth signifie by words his last mind and will. And this for the most part men vse to doe, when for feare of suddennesse of death, they dare not abide the writing of their will. And this will (vnlesse it be in certaine cases) is as strong and as sure, as is a testament or last will put in writing, and sealed with the seale of the testator.

Also though a Testament by writing be not sealed with the seale of the testator, yet is the Testament good and effectuall in the law.

And ye shall also marke, that where a man maketh once his testament and will, and afterward maketh another will by words, if his last will be proued before the Ordinarie, and by him put in writing, and insealed with his seale, such last will shall auoid the first will, vnlesse it be in speciall cases. And so alwaies the later will and testament shall auoid the former.

Finally, by an Act made the 21. yeere of King Henry the eight, it was ordained, that where part of the executors named in the testament, wherein any lands or tenements be willed to be sold by them, refuse to take vpon them the administration, and the residue doe take the charge and administration vpon them, in this case all bargaines and sales in the said lands, made onely by those executors that take the administration of the testament vpon them, should be as good and effectuall, as if all the residue of the executors so refusing had ioyned in the making of the bargaine and sale.

The

The difference betweene Executors and Administrators. Chap. 44.

EXecutor is, when a man maketh his testament & last will, and therein nameth the person which shall execute his testament, then he that is so named, is his executor, and such an executor shall haue an action against euery debtor of his testator. And if the Executors haue Assets, that is to say, sufficient in their hands, then shall euery one to whom the testator was in debt, haue action against the executor, if he haue an obligation or specialtie to shew. But in euery case where the testator might wage his law, there no action lyeth against the executor.

Assets in the hands of the executors.

Administrator is he to whom the Ordinarie committeth the administration and bestowing of the goods of a dead man, for default of an executor. And actions shall lye against him, and for him as for an executor, and he shall be charged to the value of the goods of the dead, and not further, if it be not by his false plea, or for that he hath wasted the goods of the dead. But if the Administrator die, his executors be not Administrators, but it behoueth the Ordinarie to commit a new Administration. Howbeit, if a stranger, I meane him that is neyther executor named in the testament and last will, nor yet Administrator appointed by the Ordinarie, will take the goods of the dead, and minister of his owne head and minde, without lawfull authoritie, this person shall be charged and sued as an executor, and not as an administrator, in an action which is brought against him by any creditor. But if the Ordinarie

Executor of his owne wrong.

make

make a letter ad colligendum bona defuncti, he that hath ſuch a letter, is not adminiſtrator, but the action lyeth in this caſe againſt the Ordinarie, as well as if he tooke the goods by his owne hand, or by the hand of any other his ſeruant, by any other commandement.

An act of the probate of Teſtaments, made Anno 21. H. 8. Chap. 5o.

NOthing ſhalbe taken by any, hauing authority to take probation, inſinuation, or approbation, of any Teſtament, where the goods of the Teſtator doe not amount aboue the value of C. ſ. except to the Scribe for writing thereof, vj. d. And for the Commiſſion of adminiſtration of the goods of any dying inteſtate, not being likewiſe aboue C. ſ. vj. d. Alſo none hauing power to take probate of Teſtaments, ſhal refuſe to approue Teſtaments, being lawfully offered vnto them in writing, with wax thereto annexed, ready to be ſealed, ſo that they be lawfully proued before the ſame Ordinary to be true. And when the goods of the Teſtator doe amount aboue C. ſ. and not exceed xl. ſ. none ſhall take for the probation, regiſtring, ſealing and writing of any ſuch Teſtament, aboue 3. ſ. 6. d. whereof to be to them that haue authoritie to take the probation, 2. ſ. 6. d. and the other 12. d. to the Scribe for regiſtring.

And where the goods amount aboue xl. ſ. then onely 5. ſ. to be taken: whereof to be to them that haue authority to take the probation, 2. ſ. and 6. d. and the other 2. ſ. 6. d. to the Scribe for

for the registring, or els if he refuse that 2.s.6.d. then he to haue for euery x. lines, euery line containing in length 10. yaches, a penny.

And they that haue authority, as is abouesaid, shall approue, insinuate, seale, and register the testaments, and deliuer them, sealed with the seale of their Office, to the executors, for the summe abouesaid, and that with conuenient speed, without any frustratorie delay.

And if any person die intestate, or the executors refuse to proue the testament, then they hauing authoritie as is abouesaid, shall graunt the administration of the goods to the widow of the person deceased, or to the next of kinne, or to both, after their discretion, taking suretie of them for the true administration of the goods and debts, which they shalbe so authorised to minister. And where one or diuers clayme the administration, as next of kinne, which be egall in degree of kindred, or where any one person desireth the administration as next of kinne, where indeed diuers persons be in equalitie of kindred: then in any such case the Ordinarie shal be at liberty to take one, or moe, making request, where diuers require the administration: or where but one or moe of them, and not all being in like degree, make request, then the Ordinarie shall admit the widow, and him or them only making request, or any of them, taking nothing for the same, where the person deceased died not worth C.s. And if he died worth C.s. and not aboue xl. li. then 2.s.6.d. onely to be taken. And the executor or administrator calling to him the debtors, two at the least, or such persons to whom any legacie was

made

made, and if they refuse, then two next of kin to the person deceased, and in their default, two other honest persons shall by their discretions make a true inuentorie indented of all the goods, which persons swearing before the Bishop or his officers to be true, shall deliuer the one part thereof vnto them, and the other keepe himselfe. And none hauing authoritie to take probate of testaments, vpon paine contained in this statute, shall refuse to take any such inuentorie presented and tendred to them. Inuentorie of goods.

Prouided, if any person shall dispose at will by his testament, any lands or hereditaments to be sold, that the money or profits of the same, be accounted for goods or chattels.

And they hauing the authoritie aboue said, vpon the deliuerie of the seale and signet of the testator, shall cause the same to be defaced, and incontinent shall deliuer to the executor without any claime: and if any require a copie of the testament, and inuentorie, then they hauing authority or their ministers, shall without delay deliuer them a copy, taking therof, or els for ½ registring of the same as before, for euery ten lines j.d.

Prouided, that where they hauing authoritie as is aboue said, haue vsed to take lesse for the probat or testaments, or other things concerning the same, then is here specified, they shall take as they did before this act.

Now if any that haue authoritie to take probate of testaments, or their ministers, doe attempt against this act, they shall forfeit for euery time to the partie grieued as much mony as they shall take contrarie to this act. And ouer that x.li. the

the one halfe to the King, the other to the party grieued, that will sue by action of debt, bill, information, or otherwise in any of the Kings courts, wherein no essoin, protection nor wager of the law shall be allowed. And euery of them shall be charged for himselfe, and for none other.

Prouided, that euery one hauing authoritie abouesaid, may call before them euery person so named executors, to the intent to proue and refuse the testament, and to bring inuentories, and to do euery other thing concerning the same, as they might before this act, so neyther they nor their ministers shall take aboue the fées limyted by this act.

How landes and tenements may be by Testament or otherwise disposed, enacted Añ 32. H. 8.

All the lands holden in socage.

EUery person hauing lands or other hereditaments holden in socage, or of the nature of socage tenure in chiefe, and not hauing any landes or hereditaments holden of the King by knights seruice, or socag tenure in chiefe, or of the nature of socage tenure in chiefe, nor yet of any other person by knights seruice, may giue, dispose, and deuise, as well by testament in writing, as otherwise by an act lawfully executed in his life, all his said lands or hereditaments, or any of them.

And euery person hauing lands or other hereditaments holden of the King in socage, or of the nature of socage tenure in chiefe, and hauing also any other lands or hereditaments, holden of any other person in socage, or of the nature of socage tenure

tenure, and not having any hereditaments holden of the King, or of any other by knights seruice, may from the said time giue and deuise, as well by testament in writing, as otherwise by any act lawfully executed in his life, all and euery of them at his pleasure: sauing to the King all his right of primer seisin and reliefes, and also all other rights and duties for tenure in socage, or of the nature of socage tenure in chiefe, as heeretofore hath been accustomed, the same to be taken and sued out of the Kinges hands by the person to whom any such lands shall be disposed or deuised, in like maner as hath been vsed by any heire or heires before the making of this statute. And sauing and reserning also fines for alienations of such lands and hereditaments holden of the king in socage, or of the nature of socage tenure in chiefe, whereof shall be any alteration of freehold or inheritance made by will or otherwise, as is aforesaid.

Primer seisin, Reliefes,

fines of Alienations.

Item, all persons having lands or other hereditaments of estate of inheritance holden of the king in chiefe by knights seruice, or of the nature of knights seruice in chiefe, may giue, will, or assigne, two parts of the same, in three parts to be diuided, or else so much thereof as shall amount to the yearely value of two parts of the same, in three parts to be diuided in certainty and by speciall diuisions, as it may be knowne in seuerality, for the aduancement of his wife, preferment of his children, and payment of the debts, or otherwise at his pleasure. Sauing to the King alwei the wardship and primer seisin of as much as shall amount to the clear yerely value

of Lands in capite two parts.

of

the third part thereof, without diminution, dower, fraud, couin, charge, or abridgement thereof, as alſo all fines for alienations of all ſuch landes holden of him by knights ſeruice in chiefe, wherof ſhall be any alteration of freehold, or of inheritance made by will or otherwiſe. And euery perſon hauing landes or tenements of eſtate of inheritance holden of the King in chiefe by knights ſeruice, and other landes holden of him, or of any other by knights ſeruice, or otherwiſe, may giue or aſſigne by his teſtament, or otherwiſe as is aforeſaid, two parts thereof, in three parts to be diuided, or elſe as much thereof as ſhall extend to the yearely value of two parts to be deuided in certaintie. Hauing to the King, as well the wardſhip and primer ſeiſin of as much as ſhal amount to the yearly value of the third part, without diminution, &c. As alſo for all fines for alienation, as is aboueſaid.

Fines for alienation.

Item, euery perſon holding landes or tenements onely, of any other then the King by knights ſeruice, and other lands and tenements in ſocage, or of the nature of ſocage tenure, may giue, diſpoſe, or aſſure by teſtament or otherwiſe two parts thereof holden by knights ſeruice, or as much as ſhall amount to the full yearly value of two parts, and alſo of the landes and tenements holden by ſocage, or of the nature of ſocage tenure, at his pleaſure: Hauing to the Lord of the lands and tenements holden by knights ſeruice for his wardſhip, as much therefore as ſhall amount to the cleere yearely value of the third part, without diminution, &c.

And euery perſon holding onely of the King by

by knights ſeruice, but not in chiefe, and alſo other hereditaments of others by knights ſeruice, and holding alſo other hereditaments of any other perſon in ſocage, or of the nature of ſocage tenure, may giue and aſſure by his laſt will, or otherwiſe, two parts of that is holden of the king by knights ſeruice, and two parts of that is holden of any other perſon by knights ſeruice, or as much of either of them as ſhall amount to the full yerely value of two parts, and alſo all his lands and tenements ſo holden in ſocage, or of the nature of ſocage tenure. Sauing alwell to the king the wardſhip of as much as ſhall extend to the cleare yearly value of the third part of the ſame ſo holden of him by knights ſeruice, without diminution &c. Ita alſo to the lords of whom any of the ſaid Lands bene holden by knights ſeruice, for the wardſhip as much of the ſame as ſhall amount to the cleare yearely value of the third part, in manner aboue declared. And if that third part, which in any of the caſes aboueſaid, ſhall come to the king, doe not amount to the cleare yearely value of the full third part of all the ſaid hereditaments, whereof the king ſhall be intituled to haue the cuſtodie or primer ſeiſin: then the king may take into his hands as much of the other two parts of the ſaid hereditaments, as with that of the ſame hereditaments remaining in his hands, ſhall make vp the cleere yearly value of the third part thereof, ſo to be had to him in title of wardſhip and primer ſeiſin. And like benefite to be giuen to euery Lord, of whom any ſuch hereditament ſhall be holden by knights ſeruice, concerning onely his third part for title of wardſhip.

Alſo all perſons ſhall ſue their liueries for poſ-
ſeſſions, reuerſions, or remainders, and alſo pay
reliefs and heriots, like as they ſhould haue done
before the making hereof. And fines for aliena-
on ſhall be paied in the Chauncery vpon writs of
Entrie in the poſt to be obtained there, for com-
mon recoueries to be ſuffered of any landes hol-
den of the King in chiefe, in like maner as is vſed
vpon alienations of landes ſo holden in chiefe by
fine or feoffement.

Fines for Alienations.

Prouided, that in ſuch caſes where fines for a-
lienation ſhal be paied in the Chancery for writs
of Entry in the poſt as is aforeſaid, none other fine
ſhalbe payed there for any ſuch writs.

Item, where two or more perſons hold of the
king by knights ſeruice ioyntly to them, and to
the heires of one of them, and he that hath the in-
heritance thereof, dyeth, his heire being within
age, the king ſhall haue the ward and mariage of
the body of ſuch heire, the life of the freeholder or
freeholders of the lands ſo holden by knights ſer-
uice notwithſtanding.

Sauing to all women ſuch right and title of
dower as they ought to haue of any lands or te-
nements to be aſſigned vnto them out of the two
parts of the ſaid lands or tenements ſeuered from
the third part, as is aboueſaid, and not otherwiſe,
And ſauing alſo to the king the reuerſion of all
ſuch tenements in ioynture, and dower, imme-
diately after the death of ſuch tenants, if they
ſhall happen to die, during the nonage of the
kings wards.

Of

Anno 32. H. 8.

IT is enacted, that from the first day of July in the yeare of our Lord 1540 all Mariages within this Church of England, contracted betweene lawfull persons, as by this act we declare all persons to be lawfull that be not prohibited by Gods law to marie, such mariages, being contracted and solemnized in the face of the Church, and consummate with bodily knowledg of fruit of children, or childe being had therein betweene the parties so maried, shall be deemed and taken to be lawfull, good and indissoluble, notwithstanding any precontract of matrimony not consummate with bodily knowledge either of the persons so maried, or both shall have made with any other before the time of contracting that mariage which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any dispensation, prescription, law, or other thing graunted or confirmed by act or otherwise. And that no reuersion or prohibition (Gods law except) shall trouble, or impeach any mariage without leuiticall degrees. And that no person shall after the first day of July aforesaid, be admitted to any of the spirituall courts within this the Kings Realme, or any his other Lands and Dominions to any proces, plees, or allegation, contrarie to this Act

FINIS.

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